

1
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 Index No. 2:09-CV-02254

5 -----x

CANDACE HARPER, Individually and on Behalf

6 of All Other Persons Similarly Situated,

7 Plaintiff,

8
9 - against -

10
11 GOVERNMENT EMPLOYEES INSURANCE COMPANY

12 a/k/a GEICO,

13 Defendant.

14 -----x

May 3, 2010

15 11:50 a.m.

16
17 Deposition of MARLENE HARRIS-GRANT,

18 taken by Plaintiff, pursuant to Notice,

19 held at the offices of Dorsey & Whitney

20 LLP, 250 Park Avenue, New York, New York,

21 before Todd DeSimone, a Registered

22 Professional Reporter and Notary Public of

23 the State of New York.

A P P E A R A N C E S :

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ALSO PRESENT:

WILLIAM C.E. ROBINSON, GEICO

1

2 M A R L E N E H A R R I S - G R A N T,
3 called as a witness, having been first
4 duly sworn, was examined and testified
5 as follows:

6 EXAMINATION BY MS. MCGOLDRICK:

7 Q. Good morning. My name is
8 Marilyn McGoldrick, or Marty McGoldrick.
9 I'm an attorney for the plaintiff, Candace
10 Harper, and I understand you have sat in
11 on some of the depositions previously?

12 A. Yes.

13 Q. So you basically know the
14 drill?

15 A. Yes.

16 Q. I will tell you this: If you
17 don't hear a question or you don't
18 understand a question, please just tell me
19 and I will try to rephrase it or have the
20 question read back. If you do answer a
21 question, I will assume you heard it and
22 understood it.

23 You are not locked in here for
24 the day. If you need to take a break at
25 any time, please let me know. However,

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2 the only caveat to that is if there is a
3 question pending, could you please answer
4 completely before we take a break.

5 A. Okay.

6 Q. Sometimes I tend to speak
7 quickly. If I'm talking too fast, don't
8 hesitate to slow me down so that you can
9 understand.

10 Can you state your full name
11 for the record, please.

12 A. Marlene Harris-Grant.

13 Q. And are you currently employed?

14 A. Yes.

15 Q. Where are you employed?

16 A. GEICO Insurance.

17 Q. Where is that?

18 A. 750 Woodbury Road, Woodbury,
19 New York, 11797.

20 Q. Are you appearing here today on
21 behalf of GEICO?

22 A. Yes.

23 MS. MCGOLDRICK: For the
24 record, this is a 30(b)(6) deposition.

25 MR. HEMMENDINGER: Actually, I

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2 think it is not, but I don't know if that
3 makes a difference.

4 MS. MCGOLDRICK: I thought it
5 was. That is fine.

6 Q. As far as deposition prep goes,
7 did you meet with anybody before coming
8 here today to discuss this deposition?

9 A. No.

10 Q. You didn't meet with any of
11 your attorneys?

12 A. No.

13 Q. Did you review any documents?

14 A. Just the answer to, what is it,
15 number 6 or something.

16 Q. The interrogatory?

17 A. Yes.

18 Q. And when did you review that?

19 A. Sometime last week, maybe
20 Wednesday or Thursday.

21 Q. So you didn't have any meetings
22 or conversations with the attorneys for
23 GEICO?

24 A. No.

25 Q. This deposition was previously

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2 scheduled in March. Do you recall that?

3 A. Yes.

4 Q. Did you have any meetings with
5 anybody at that time?

6 A. Yes.

7 Q. Who did you meet with at that
8 time?

9 A. It was Eric, John and I, and
10 Bill Robinson was there.

11 Q. And did you review any
12 documents at that time?

13 A. No, I didn't.

14 Q. Who is Bill Robinson?

15 A. He is GEICO counsel.

16 Q. How long did you meet with
17 counsel for?

18 A. Probably 30 minutes or so.

19 Q. Did you speak with anybody else
20 regarding this deposition today?

21 A. No.

22 Q. You didn't have conversations
23 with anybody at GEICO concerning the
24 deposition?

25 A. My supervisor knows that I'm

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2 here today for the deposition.

3 Q. And did you have a conversation
4 about the deposition with your supervisor?

5 A. No.

6 Q. So does she know you are here
7 for the deposition?

8 A. It is a he. He knows of the
9 case and that I will be off from work
10 today as a result of being here to be
11 deposed.

12 Q. And what is your supervisor's
13 name?

14 A. Robert Leone.

15 Q. What is your current position
16 at GEICO?

17 A. I'm a claims TA2 supervisor.

18 Q. Is a TCR2 supervisor the same
19 as at TA2 supervisor?

20 A. Right.

21 Q. And is a TCR2 a telephone
22 claims representative 2?

23 A. Yes.

24 Q. So if I refer to a TA2, it is
25 the same as a TCR2?

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2 A. Yes.

3 Q. And how long have you held that
4 position?

5 A. April of this year will be two
6 years. A little over two years.

7 Q. How long have you been at
8 GEICO?

9 A. Ten years, a little over ten.

10 Q. Can you give me a brief
11 description of your employment history at
12 GEICO, where you began?

13 A. I started in CSR. Then I
14 always get it mixed up whether I went to
15 PIP first or TA1.

16 Q. Were you an examiner?

17 A. I was an examiner. And I was a
18 TA2 examiner, continuing unit examiner, CU
19 examiner for short. Then I became a TA1
20 supervisor. And now I'm a TA2 supervisor.

21 Q. How long were you a CSR
22 examiner?

23 A. A little over a year.

24 Q. And then how long were you a
25 PIP examiner?

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2 A. About one year.

3 Q. TA2 examiner?

4 A. About the same.

5 Q. CU examiner?

6 A. About the same.

7 Q. About a year?

8 A. About a year.

9 Q. And then how long were you a
10 TA1 supervisor?

11 A. Maybe a little over a year,
12 like a year and a half or so.

13 Q. And how many individuals did
14 you supervise as a TA1 supervisor?

15 A. I'm going to count by the best
16 of what I remember. I believe it was six.

17 Q. Did that number usually stay
18 the same?

19 A. Yes.

20 Q. And now as a TA2 supervisor,
21 you said you have been one for about two
22 years now?

23 A. Yes.

24 Q. How many examiners do you
25 supervise?

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2 A. Right now, six.

3 Q. Has that number changed?

4 A. Yes. Before I had seven and
5 then we moved that down to six.

6 Q. Was this all in the Woodbury
7 location?

8 A. Yes.

9 Q. Is there a particular hierarchy
10 at Woodbury?

11 A. In terms of?

12 Q. In terms of who --

13 A. Our VP is and so forth?

14 Q. Yes.

15 A. Yes.

16 Q. Can you describe that just
17 generally for me?

18 A. The names of the individuals or
19 just the title?

20 Q. The name and the title.

21 A. The regional VP is Seth Ingall.
22 Then the AVP, assistant vice president, is
23 John Pham. From a Liability standpoint, I
24 can only speak that we have our Claims
25 director, and he is Jeremy Connor. Then I

1 HARRIS-GRANT

2 have my direct supervisor, who is Rob
3 Leone.

4 Q. This is in the Liability?

5 A. This is in the Liability. The
6 No-Fault Department has their own
7 director. Then you have the president for
8 Underwriting. So those are different
9 areas that I'm not very familiar with.

10 Q. So your direct supervisor is
11 Rob Leone?

12 A. Yes.

13 Q. Has that changed in the two
14 years since you have been a TA2
15 supervisor?

16 A. Yes.

17 Q. How long has Rob been your
18 supervisor for?

19 A. Maybe a year now.

20 Q. And who was your supervisor
21 before that?

22 A. Linda Wysocki.

23 Q. So she was also your supervisor
24 for about a year?

25 A. Yes.

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2 Q. Does the TCR Department that
3 you supervise have a name or is it
4 referred to as anything in particular?

5 A. That's the name, TCR2, TA2.

6 Q. But is there a department or --

7 A. It is a TA2 Department.

8 Q. How many other TA2 supervisors
9 are there?

10 A. I think there is about 19 of
11 us.

12 Q. Do they all supervise
13 approximately six examiners?

14 A. Yeah, six or seven.

15 Q. As far as your job duties and
16 responsibilities go, can you just describe
17 those for me briefly?

18 A. I'm the supervisor for six
19 associates. I'm responsible for helping
20 them to meet their goals and/or exceed it,
21 motivate them career-wise in whatever
22 direction it is that they want to go. I
23 meet with them and I conference files with
24 them.

25 And I have my administrative

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2 stuff that I'm also responsible for. Do
3 you need me to break that down as well?

4 Q. If you could, yes.

5 A. I have reports I have to look
6 at on a weekly basis.

7 Q. What kind of reports?

8 A. Like feature reports, reports
9 in terms of I have to do SPRs, like file
10 audits for my associates as well.

11 Q. What is an SPR?

12 A. A self-performance review.

13 Q. These are file audits you are
14 required to do for individuals you
15 supervise?

16 A. Yes.

17 Q. How many self-performance
18 reviews are you required to do?

19 A. I do three. One is a cross,
20 meaning for someone else outside my group.
21 And two for each of my examiners.

22 Q. Two for each, so twelve?

23 A. Right.

24 Q. How often are you required to
25 do this?

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2 A. Every month.

3 Q. Do you have your performance
4 reviewed?

5 A. Yes.

6 Q. Is that done on a yearly basis?

7 A. Yes.

8 Q. Is it similar to the TA2s
9 performance reviews in that you have a
10 performance guide that you go by?

11 A. Yes.

12 Q. Who does your performance
13 review?

14 A. My manager, my supervisor, Rob
15 Leone.

16 Q. Is that done yearly?

17 A. Yes.

18 Q. So if the TA2s you supervise
19 meet their goals, is your review better?

20 A. Yes, it is the same, uh-huh.

21 Q. You said a TA1 is the same
22 thing as a TCR1?

23 A. Right.

24 Q. And you were a TCR1 supervisor
25 for about a year?

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2 A. For about a year, a little over
3 a year.

4 Q. What is your general
5 understanding of the duties of a TCR1?

6 A. They pretty much have the same
7 duties as a TA2 except for the bodily
8 injury aspect of it, where they don't
9 negotiate the files with the attorneys,
10 but they investigate, you know, make
11 assessments and resolve liability, and
12 they also look like into exposures in
13 terms of injured parties to see if the
14 file should be moved up to the higher
15 level, which is TA2 or CU.

16 Q. So their duties are essentially
17 the same, it is just the difference
18 between them is a TA1 does not handle
19 bodily injury claims?

20 A. Yes.

21 Q. And what dollar amount can a
22 TA1 handle claims up to?

23 A. In terms of the property
24 damage?

25 Q. Yes.

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2 A. I believe it is \$5,000 as well,
3 the PD payout.

4 Q. What does the PD payout mean?

5 A. The property damage for both
6 first-party damage to our insured's
7 vehicle and to third-party vehicles.

8 Q. And what dollar amount can a
9 TA2 handle claims up to?

10 A. I believe it is the same.

11 Q. \$5,000?

12 A. Yes.

13 Q. Is that total?

14 A. Yes.

15 Q. So for bodily injuries they can
16 handle claims up to \$5,000?

17 A. No, not bodily. Property
18 damage I was speaking about.

19 Q. I'm sorry. So when you are
20 saying TA2s also handle property damage
21 claims, they have a \$5,000 maximum?

22 A. Yes.

23 Q. What about bodily injury claims
24 for TA2s?

25 A. They have \$10,000 for a single

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2 person or 12.5 combined for the entire
3 file, if there is more than one person.

4 Q. Are they allowed to handle
5 claims up to \$25,000 total?

6 A. Yes.

7 Q. So when you are saying they
8 have a \$10,000 injury max, what does that
9 mean?

10 A. On their own they could settle
11 their file.

12 Q. Settle their file without
13 authority?

14 A. Yes.

15 Q. Is this a new policy?

16 A. No, it has always been that
17 way.

18 Q. Has there been any change in
19 policy since March of this year with
20 regard to the TA2 and what kind of claims
21 they could handle?

22 A. In what type of claims they
23 could handle?

24 Q. Or their job responsibilities
25 and duties.

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2 A. No, there hasn't been any
3 change.

4 Q. So if a TA2 can handle bodily
5 injury claims up to \$10,000, if there is
6 ever a case where they finish the
7 liability evaluation, they don't need to
8 come to you for approval first before they
9 could settle it?

10 A. Let me try and understand that.
11 The \$10,000 is for the bodily injury.
12 When you say "liability," in my mind, as a
13 liability person, I'm thinking percent
14 negligence. So I'm not sure I understand
15 the question. Could you repeat it for me.

16 Q. You said that a TA2 could
17 handle a single bodily injury claim up to
18 \$10,000 without approval?

19 A. Right.

20 Q. You said this has been the way
21 it has been across the board?

22 A. Uh-huh.

23 Q. So a TA2 is not required --
24 when is a TA2 required to seek approval
25 for authority of an amount to settle from

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2 you?

3 A. Above their authority.

4 Q. Does GEICO have a computer
5 claims system?

6 A. Yes.

7 Q. What is that called?

8 A. Claim IQ.

9 Q. Can you describe what that is,
10 please?

11 A. It is a tool that we when we
12 are at the beginning of the claim when it
13 comes to our unit, the TA2 Unit, if they
14 have to take a recorded statement, it has
15 loss scenarios so they can choose what
16 they believe applies to the loss, it gives
17 them guidance in terms of questions.

18 Q. When did the system come into
19 effect?

20 A. I believe it was when I was
21 there as an examiner, maybe 2006.

22 Q. And prior to Claims IQ, was
23 there any other kind of computer program?

24 A. No, not a computer. We did it
25 on paper.

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2 Q. It was all done by paper?

3 A. Uh-huh.

4 Q. And were there particular forms
5 that the TA2 were required to complete?

6 A. The paper form, which is a
7 summary.

8 Q. So all of the work that used to
9 be done in the paper form can now be done
10 in Claims IQ?

11 A. I don't know if I would say
12 all. I mean like the liability question
13 in terms of the recorded statement, like
14 before it used to be the question would be
15 on a paper or you just knew it by heart.
16 You didn't have to look at the paper.

17 Q. So before you might have a
18 piece of paper with a script of questions
19 on it?

20 A. With a script of questions.

21 Q. Now that script of questions is
22 contained in Claims IQ?

23 A. Yes.

24 Q. And what is the purpose of the
25 system itself?

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2 A. It is basically a tool, like I
3 said, like a guide, to really show -- in
4 my opinion, it is like a reminder of the
5 critical thinking that they need to
6 utilize when they are investigating a
7 claim, like it has an area like, all
8 right, did you take a look at the police
9 report, there is a little area for that
10 that you can put that.

11 It gives a question guide.
12 They don't have to ask every question and
13 they don't normally ask every question.
14 But it is just used to remind them that
15 they could ask and it has areas that they
16 could put their notes.

17 Q. Is that called the alog?

18 A. No. It has little boxes on
19 that screen. The alog is a separate thing
20 that they could add notes.

21 Q. What's the alog, then?

22 A. It is for every transaction,
23 every conversation that you have with
24 someone, you document that in the claim
25 file.

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2 Q. Is that separate from Claims
3 IQ?

4 A. Whatever you write in Claim IQ
5 as a note, it rolls into the alog.

6 Q. So you don't have to do it
7 again?

8 A. You don't have to go back and
9 forth.

10 Q. Are the examiners required to
11 put everything that they do in a file on
12 to Claims IQ?

13 A. No, not everything onto Claim
14 IQ.

15 Q. Are they supposed to document
16 the file?

17 A. They are supposed to document
18 the file.

19 Q. And do you have access to the
20 information contained in Claims IQ?

21 A. Yes.

22 Q. For each of the examiners that
23 you supervise?

24 A. Yes.

25 Q. So you can get onto Claims IQ

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2 and you can monitor their files?

3 A. Yes, everyone can.

4 Q. So it allows you to closely
5 monitor the work of the examiners that you
6 supervise?

7 A. It is to have ready access in
8 case that person is out, someone else gets
9 a phone call, they can pick it up and go
10 in and see everything that is available
11 there.

12 Q. How often do you go into, for
13 example, the alog to review the files that
14 your examiners are working on?

15 A. If they come in to conference a
16 file with me, if I get a phone call from a
17 customer or a third party or someone, and
18 at three-month intervals, we call it time
19 reserve reviews. So three months, six
20 months, 12 months and 18 months.

21 Q. And those are file reviews?

22 A. Yes.

23 Q. Is that different than file
24 conferencing?

25 A. Yeah.

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2 Q. So what occurs when you do a
3 file review?

4 A. It is basically checking the
5 reserves, making sure the file is
6 progressing on track. If it is off-track,
7 you give guidance to say let's get this
8 file back on diary.

9 Q. So you are monitoring the
10 files?

11 A. Yes.

12 Q. Other than the three-month, the
13 six-month, the 12-month and the 18-month,
14 do you have informal file reviews?

15 A. If they come in. Like if they
16 need my opinion on liability, maybe it is
17 a complaint call, an upset customer, and
18 they want to discuss it with me before the
19 call comes in, they come in and we review
20 it together.

21 Q. How often does that occur?

22 A. In terms of complaints, not
23 very often.

24 Q. Not just complaints. How often
25 do the examiners that you supervise come

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2 in and talk to you?

3 A. On a daily basis.

4 Q. So they have questions on a
5 daily basis?

6 A. Yes.

7 Q. Are those conversations that
8 you have, are they recorded on the alog
9 system?

10 A. Yeah, I will document my
11 conversation with them if that happened.

12 Q. But are there occasions clearly
13 when an individual -- you have a
14 conversation with an examiner and it is
15 not then recorded in alog?

16 A. No, not with me.

17 Q. So if someone comes in and says
18 "Hey, I just got those meds in, I will get
19 them to you soon," you turn around and
20 document in alog?

21 A. That doesn't take place. To
22 say I got those -- most of their work is
23 done independently. My examiners can just
24 walk in, they can say "You know what,
25 Marlene, I have this going on, can I run

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2 this by you, I asked a few people around
3 me and I'm not certain, can I run it by
4 you and see," on those occasions they will
5 see me, or if they specifically say "I
6 need to conference with you, are you
7 available at 2 o'clock today."

8 Q. So on a daily basis you are
9 usually speaking with your supervisees,
10 either conferencing a file, reviewing a
11 file, auditing a file. Are you in touch
12 with them on a daily basis?

13 A. Yes. I interact with them on a
14 daily basis to spot-check to see how their
15 day is going like in terms of their goals,
16 if they made a closure today, if they
17 resolved, because each settlement is like
18 a win for them, so they will say "Marlene,
19 do you know I resolved that case, it
20 finally got resolved," so on and so forth.

21 MS. MCGOLDRICK: Could you
22 please mark this as Exhibit 1. It is
23 GEICO number 00130.

24 (Harris-Grant Exhibit 1 marked
25 for identification.)

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2 Q. Would you agree with me this is
3 a snapshot of an alog, the top portion of
4 it, computer portion?

5 A. Yes.

6 Q. And then we have, at 12-11-08,
7 I think it says 7:22 p.m. -- it is hard to
8 read -- it says "C71 file three-month
9 review"?

10 A. Yes.

11 Q. Is that the three-month review
12 you talked about before?

13 A. Yes.

14 Q. That's called a C71?

15 A. Yes.

16 Q. That note is entered by you,
17 correct?

18 A. Yes.

19 Q. Does that mean that the file
20 was reviewed for three months and you are
21 putting your notes in the file?

22 A. Yes, it came up for review.
23 The examiner wrote a review. So it
24 escalated up.

25 Q. When you review a file with an

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2 examiner, do they come into your office?

3 A. No.

4 Q. They put the information into
5 the computer and you review it on the
6 computer?

7 A. Right.

8 Q. So you don't have any
9 conversation with them about it?

10 A. No.

11 Q. So you put any information that
12 you want in response to the review into
13 the alog system?

14 A. Right. And it may get e-mailed
15 to them.

16 Q. So then it says "Let's get
17 adverse info from attorney" --

18 A. "Office."

19 Q. -- "to contact for NF and subro
20 rep."

21 So you are asking Ms. Harper to
22 essentially get some additional
23 information on this file, correct?

24 A. Yes.

25 Q. Then we move up to 12-15-08 at

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2 9:49, the entry at the top, and do you see
3 that that is entered by Candace Harper?

4 A. Yes.

5 Q. It says "RVM" -- is that
6 returned voice mail?

7 A. Yes.

8 Q. -- "to Ray at" --

9 A. "at A/C adverse."

10 Q. Do you know what that means?

11 A. She wrote "Returned voice mail
12 to Ray at adverse carrier. Advised him of
13 the policy limits."

14 Q. Thank you.

15 At the bottom, there is a
16 handwritten note. It is signed MHG. Is
17 that you?

18 A. Yes.

19 Q. And it is dated 1-7-09?

20 A. Correct.

21 Q. It says "Candace, please read
22 your last alog entry upward to see what
23 transpired on your file whenever you're in
24 your file/claim. See my C71 e-mail on
25 12-11-08. See your 12-15 alog only

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2 leaving message disclosing our BI limit.

3 Your alog should've reflected you asked

4 for info I advised you to secure.

5 Thanks."

6 Is that what it says?

7 A. Yes.

8 Q. So is this more of an informal

9 review?

10 A. This is a coaching. It is like

11 a quick coaching to her.

12 Q. So what is coaching?

13 A. It is like the interaction that

14 you may have with something, you come

15 across something on a claim file that they

16 may have missed an opportunity to secure

17 information or something and you are just

18 pointing it out to them.

19 I could have written it on the

20 alog, but I chose to do it this way to her

21 to say "Next time you are in your file,

22 just take a look at what transpired in

23 your file from your last entry onwards."

24 Then right here where it is

25 saying the RVM, that can be used

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2 interchangeably, she could be saying
3 received voice mail or return voice mail
4 message to the person.

5 Q. In order to perform your duties
6 coaching, you have to go into the alog to
7 check to see what your examiners are doing
8 so you can coach them?

9 A. Right. When you come across
10 things in a file, that happens, you coach
11 to it.

12 Q. And in order to find it, if you
13 came across something in the file, you
14 have to review them on a regular basis,
15 right?

16 A. When you say, like, review, I'm
17 not in every file every single day.

18 Q. In this case you asked her to
19 do something on 12-15-08 and then you went
20 back into the file on 1-7-09 to see if she
21 did it, or were you just reviewing the
22 file for coaching?

23 A. Let me review this.

24 On 12-11, I did the e-mail to
25 her. On 12-15 -- this is signed 1-7-09.

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2 I'm not sure why I was back in the file.

3 Q. Were you monitoring the file to
4 make sure that Ms. Harper obtained the
5 information you advised her to get?

6 A. I probably could have been
7 doing that.

8 Q. Do all TA1s and TA2s use the
9 system in Woodbury?

10 A. Yes.

11 Q. Is that system, the Claims IQ
12 system, specific to Woodbury?

13 A. No, it is company-wide.

14 Q. So all GEICO regions use the
15 system?

16 A. Yes, as far as I know.

17 Q. So would you agree that
18 anything done on the file is supposed to
19 be documented in Claims IQ?

20 A. Yes. Not on Claims, on the
21 alog.

22 Q. On the alog, I'm sorry. And
23 would you agree that there is a lot of
24 file documentation that examiners are
25 supposed to do?

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2 A. That everyone, right, is
3 supposed to do.

4 Q. A lot of updating of claims
5 files in the system?

6 A. Yes.

7 Q. How are examiners trained to
8 use Claims IQ?

9 A. How are they trained?

10 Q. How are they trained.

11 A. There is a training class. I'm
12 trying to remember when it rolled out. It
13 has been around for so long. I think I
14 was trained. One minute. I'm trying to
15 think.

16 Q. That's okay. Take your time.

17 A. I must have been trained at my
18 desk on the floor when it came out.

19 Q. Did anybody have to go to a
20 sort of school to get trained in Claims
21 IQ?

22 A. I know I didn't, no.

23 Q. And you were there in 2006 when
24 it rolled out like everybody else, right?

25 A. Yes.

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2 Q. What was your position then?

3 A. TA2 examiner.

4 Q. So there was no centralized
5 training for all regions?

6 A. I don't know if there was
7 centralized training, but I know I didn't
8 go anywhere to get trained for Claim IQ.

9 Q. Is there continued training
10 over the years?

11 A. There is always training.
12 That's the one thing that we are known
13 for. We are always training.

14 Q. What kind of training?

15 A. In terms of the file handling,
16 negotiations, we have seminars that a firm
17 may come in and show you like trends of
18 what they are seeing, what the courts are
19 seeing.

20 Q. I'm talking about in terms of
21 Claims IQ.

22 A. In terms of Claims IQ, no.

23 Q. So when you do your coaching,
24 would you coach them on how to be better
25 at Claims IQ?

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2 A. How to update the system, yes.

3 Q. Do you continue to get training
4 in Claims IQ as well?

5 A. I personally?

6 Q. Yes.

7 A. No.

8 Q. So when you are coaching them,
9 it is based on your prior training in 2006
10 when the systems rolled out?

11 A. Right.

12 Q. But that's one of your jobs, is
13 to make sure that the TA2s that you
14 supervise get better at working the Claims
15 IQ system?

16 A. Right. You know what, one
17 minute. I take that back. From time to
18 time you do get system enhancements. And
19 it rolls out to everyone.

20 Q. Those are just system updates?

21 A. Yes, system updates in terms of
22 the Claim IQ system, and everyone gets
23 that. It is nothing where you have to go
24 anywhere. Like they will have tools that
25 they might add to it and stuff like that,

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2 reference.

3 Q. And they provide guidelines on
4 how to use that?

5 A. Yes.

6 Q. Is that sent via e-mail?

7 A. It is via e-mail.

8 Q. It is usually via e-mail?

9 A. Uh-huh.

10 Q. Are there any written
11 guidelines provided to TA1s and TA2s to
12 guide in the claims handling process?

13 A. The claims handling process,
14 yeah. We have the Claims Manual. It is
15 also electronic as well for easy
16 reference.

17 Q. When was the first time you
18 were provided with a copy of the Claims
19 Manual?

20 A. I think years ago. Probably
21 when I just started.

22 Q. So is the Claims Handling
23 Manual provided to TA1s or TA2s when they
24 begin their job at GEICO or at some other
25 particular time?

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2 A. It is when they begin their job
3 and it is readily available in the system.
4 I think it is one of the things along the
5 side there that says "Claims Manual."

6 Q. So when someone first started
7 their job at GEICO, whatever their
8 position is, they will get a copy of the
9 Claims Manual?

10 A. If they are in Claims.

11 Q. As part of their initial
12 training, is it fair to say that they
13 receive a lot of training material when
14 they first begin?

15 A. I'm trying to remember. Even
16 if I get a new person, I don't follow up
17 to see what type of material they receive.
18 In the training, I know when I started, I
19 did get a Claims Manual, and I may have
20 gotten like other reference paperwork and
21 so forth.

22 Q. Was there any centralized
23 training schools for TAs or TA2s?

24 A. If there is one now?

25 Q. Well, is there one now?

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2 A. Yes.

3 Q. When did that come into effect?

4 A. I don't know.

5 Q. Did you go to a centralized
6 school when you first began?

7 A. No.

8 Q. As far as the Claims Handling
9 Manual, are the TA1s and TA2s required to
10 read this manual?

11 A. Yes, we went through it because
12 there are aspects of claims handling that
13 we need to go through it.

14 Q. Who went through it?

15 A. Everyone that is in Claims. If
16 it is given to you, it is not just a
17 manual for you to have. You refer to it
18 throughout your training process and you
19 can always reference back to it as well.

20 Q. When they are first given the
21 manual, are they required to read it in
22 its entirety?

23 A. I'm not sure if it is in its
24 entirety that they would read it all. I'm
25 not sure. I would have to speak for

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2 myself, because I don't remember.

3 Q. So they are given a copy of it.
4 You don't know whether or not they have to
5 read it, but they have access to it?

6 A. I know they go through it. But
7 I don't know if they read it like
8 literally page by page. I couldn't speak
9 to that.

10 Q. How do you know they go through
11 it?

12 A. Because when I was trained, we
13 had to go through it. Like the trainer
14 went through it with you.

15 Q. So when you are beginning your
16 job and you are being trained, you go
17 through it with the trainer?

18 A. Yes.

19 Q. Are you required to read it,
20 continue to read it on a yearly basis, for
21 example?

22 A. No, I don't read it on a yearly
23 basis, so I wouldn't think so.

24 Q. So you may have gotten it at
25 the beginning of your training, you may

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2 have gone through it then, and then you
3 have access to it, but are the TA2s and
4 TAIs required to keep updated with it?

5 A. No.

6 Q. So you don't know whether or
7 not they actually have read -- for
8 example, in Candace Harper's case, do you
9 know whether or not she read the manual in
10 its entirety?

11 A. I wouldn't know.

12 Q. Do you know whether or not she
13 referred to the manual on a daily basis?

14 A. No.

15 Q. Do you know whether or not she
16 referred to the manual on a regular basis?

17 A. No.

18 Q. Do you know whether or not your
19 TA2s referred to the manual on a regular
20 basis?

21 A. No, I don't know that.

22 Q. And there is no written policy
23 anywhere that they have to sign off that
24 they read this manual?

25 A. We signed a bunch of paper I

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2 know when we started and we were given the
3 manual and a couple of stuff. But I don't
4 know if it is specific to say that you
5 have signed that you have read the Claims
6 Manual.

7 Q. So you don't know?

8 A. I don't know.

9 Q. Would you agree that the manual
10 itself provides very specific guidelines
11 and details regarding the claims handling?

12 A. Yes.

13 Q. You talked about file audits
14 briefly. You said that there is --
15 actually, why don't you tell me again,
16 what kind of audits are done on files?

17 A. It is called the SPR,
18 self-performance review. And basically it
19 is our internal audit per examiner to make
20 sure that we are in compliance with New
21 York State regs and statutes, meaning have
22 we mailed out the required letters within
23 the time frame that we are supposed to
24 mail them out, did we resolve liability in
25 a timely manner, did we make a fair

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2 settlement. If you had all the
3 information, did you arrive at the
4 decision in a timely manner.

5 You want to look to see was the
6 claim handled fairly and expeditiously.
7 Also was it resolved within our policy
8 limits as well. Sometimes you can have an
9 error where someone is looking to have
10 paid above the policy. You look to see
11 were payments made, if they were made,
12 were they accurate as well.

13 Q. Who is doing the
14 self-performance, the individual
15 examiners?

16 A. The supervisor. And you have
17 it to where you will do it side by side
18 with the examiner or they may do it
19 independently. It is at a supervisor's
20 choice.

21 Q. So a supervisor must perform
22 the audit, though?

23 A. Yes.

24 Q. I'm sorry, how many of these
25 are you performing in a month?

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2 A. I'm doing three per person.

3 Q. Three per week was it?

4 A. No, for the month. I have the
5 month to do it all.

6 MS. MCGOLDRICK: Can you mark
7 this as Exhibit 2. It is GEICO 00147.

8 (Harris-Grant Exhibit 2 marked
9 for identification.)

10 Q. This document is the TA2
11 Examiner Goals; is that correct?

12 A. Yes.

13 Q. So this is examiner goals for
14 2008?

15 A. Yes.

16 Q. This document I gather is the
17 goals given to the examiner for the
18 following year. So the examiner gets this
19 paperwork and goes over it with the
20 supervisor to know in advance what they
21 have to do for the following year?

22 A. I'm just questioning the date
23 on this. It is dated 5-1-07.

24 Q. So would that mean that she was
25 given these goals well in advance of the

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2 2008 year?

3 A. That's very unusual for that to
4 happen. You usually get the goal within
5 the year that the goal comes out.

6 Q. Would you get it when you were
7 having your performance review done or
8 could it be at any time during the prior
9 year?

10 A. It is normally within the year
11 of the new goal. So the 2010 goal, you
12 get the goal in 2010. I don't know if she
13 made a mistake with the date or something.

14 Q. So it may have been given to
15 her on 5-1-08 as opposed to 5-1-07?

16 A. Well, that would be very late,
17 too. I'm not sure.

18 Q. But it is the TA2 Examiner
19 Goals for 2008, right?

20 A. Yes.

21 Q. And then at the top we have the
22 goals, number 1, 2, 3, 4, 5, and then a
23 weight given for each of the goals?

24 A. Yes.

25 Q. The third one down is a CPR

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2 audit. Can you tell me what a CPR audit
3 is?

4 A. Claims performance review.

5 Q. And what is that?

6 A. Claims Home Office.

7 Q. So it is done by Claims Home
8 Office?

9 A. Yes.

10 Q. And what occurs when there is a
11 claims performance review?

12 A. It is the same type of audit
13 that I do.

14 Q. And how often are these done?

15 A. Maybe once a year, if it takes
16 place.

17 Q. And why do you say if it takes
18 place?

19 A. Because maybe they don't come
20 in, you know, maybe they didn't happen to
21 come in to do an audit, but it is if they
22 come.

23 Q. And if they commonly do an
24 audit, how many files -- are they auditing
25 the files for the entire unit?

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2 A. It is randomly chosen. They
3 don't go by unit.

4 Q. So they could do just the TAls?

5 A. If they come in, they are doing
6 everyone. But, I mean, like they don't
7 look and say for Marlene's unit, I'm doing
8 one per her examiners. It may be just a
9 whole number of files that they take and
10 it is dispersed wherever it falls out.

11 Q. So if in 2008 there was a CPR
12 audit in this case, then it would be --
13 the weight would be 10 percent?

14 A. Yes.

15 Q. Then we have, is that first
16 quarter audit?

17 A. Yes.

18 Q. Then we have second quarter
19 audit and third quarter audit?

20 A. Yes.

21 Q. What are those?

22 A. It is for the quarters in the
23 year if they did one, in the first
24 quarter, second, or the third.

25 Q. And who does those?

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2 A. This was -- at Woodbury, we had
3 an audit team that did that. They were
4 called the PRT, performance review team.

5 Q. And who is made up of the PRT,
6 performance review team?

7 A. It was supervisors, people that
8 had applied to that position and were
9 selected.

10 Q. What occurred during these?

11 A. They would randomly choose
12 files and do the same type of audit that I
13 would do.

14 Q. And then the supervisor of the
15 SPR audit that you referred to, you
16 discussed that. What's a CIQ audit?

17 A. That's a Claim IQ.

18 Q. And what happens during a
19 Claims IQ audit?

20 A. You would look to see were
21 there any recorded statements taken, and
22 if it was, was it summarized. You would
23 look to see if there was a police report
24 taken, was it updated in there as well.

25 Q. And when you say you would

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2 look, who does the CIQ?

3 A. Whoever does the audit, the
4 supervisor.

5 Q. So do you do CIQ audits?

6 A. In that year when I started,
7 yes.

8 Q. And has it changed since then?

9 A. This is no more Claim IQ audit.
10 For '09 there wasn't any.

11 Q. For '09 there wasn't any?

12 A. No.

13 Q. And do you know why?

14 A. No.

15 Q. So between the CPR audit, the
16 first quarter audit, second quarter audit,
17 third quarter audit, supervisor audit, CIQ
18 audit, and then here it says voice mail
19 audit, what does that mean?

20 A. We would audit to improve our
21 customer service and to ensure outstanding
22 customer service, we audit to make sure
23 all calls received in that business day
24 was returned within that business day.

25 Q. And who is "we"?

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2 A. The supervisor.

3 And we had an independent audit
4 that would do that. I'm looking at the 5
5 percent for the Claim IQ, and that may
6 have been the reason why, with the 5
7 percent weight on it, it was like
8 rudimentary. It wasn't necessary.

9 Q. That may be why you believe
10 there is no longer a Claims IQ audit?

11 A. Yeah, because it is not
12 significant.

13 Q. Are there still voice mail
14 audits?

15 A. No.

16 Q. That may be because it was the
17 5 percent?

18 A. Yeah, that stopped, too, in
19 '08, because we did great on that.

20 Q. And when you would audit the
21 voice mails, was it actually a voice mail
22 you were listening to or were you
23 listening in on a conversation that one of
24 your examiners was having?

25 A. A voice mail. You would

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2 randomly say I choose to listen to her, I
3 would just listen to the message and write
4 the time and date it came in. I would
5 check like the next day on the alog to see
6 if it was documented that the customer's
7 call was returned.

8 Q. So all of these audits, the
9 examiner's claims files are being
10 monitored closely, correct?

11 A. No. For a voice mail audit,
12 you just go in under the date that the
13 message came in and you would just look
14 the next day to see was that call returned
15 or not. But it is not being closely
16 monitored.

17 Q. How often did you do voice mail
18 audits?

19 A. Not very often.

20 Q. Once a week?

21 A. Maybe once a week, and I
22 wouldn't even say per person. If I had
23 six people, whatever, for the month, like
24 I would focus on one person for that week,
25 I would just write down and spot-check.

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2 You could tell, too, if you got an issue,
3 if you got complaint calls, that was an
4 indicator.

5 Q. If you got complaint calls,
6 what would happen?

7 A. You would have a coaching
8 session with the examiner to see what
9 happened, why wasn't this customer's call
10 returned, they keep saying they are
11 leaving messages. And sometimes you find
12 out that they believe we have caller ID
13 and they would not leave like an actual
14 message, thinking that the person could
15 call back and see their number.

16 Q. So there are seven audits here.
17 You've got seven audits. You have file
18 reviews, third month, sixth month, 12
19 months and 18 months, and then you have
20 formal and informal reviews and file
21 conferences, right?

22 A. Where is that?

23 Q. I'm talking just in total.

24 A. In total, in terms of audits?

25 Q. In terms of audits, so there

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2 are seven audits listed here.

3 A. You are counting like one --

4 Q. There are seven different types
5 of audits?

6 A. Yes, I'm sorry.

7 Q. So there are seven different
8 types of audits?

9 A. Yes.

10 Q. Then you have a three-month
11 file review?

12 A. Uh-huh.

13 Q. A six-month file review that is
14 done?

15 A. Uh-huh.

16 Q. A 12-month file review?

17 A. Uh-huh.

18 Q. 18-month file review?

19 A. Uh-huh.

20 Q. You have informal meetings with
21 your examiners?

22 A. Uh-huh.

23 Q. And you do file conferences?

24 A. Uh-huh.

25 Q. And you review alog?

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2 A. Throughout all of that you are
3 doing that.

4 Q. So you don't -- you wouldn't
5 agree that that is closely monitoring your
6 examiners?

7 A. No, because the thing is, it is
8 not all those different files. I could be
9 doing a three-month review or a six-month
10 review and doing one of these audits on
11 it. So it is that one file.

12 Like I wouldn't go look for
13 multiple different files, I just don't
14 have the time to do that. If the person
15 came in and conferenced a medical file
16 with me for settlement authority, I would
17 choose that file to do the SPR with them
18 side by side to do the audit on it.

19 Q. You might do some of the audits
20 on files that are being conferenced?

21 A. Right. You were just pointing
22 this out and saying closely monitored. I
23 can go a week without conferencing or
24 meeting with an associate within that
25 week.

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2 Most of the conferences that I
3 have with my examiners, it is
4 self-generated, meaning they come to me
5 and they want to discuss something, or if
6 it rolls up on these monthly audits that
7 we all have to do to make sure that our
8 reserves are adequate and that the file is
9 on track, whether it should be closed,
10 opened, or not.

11 Q. So you are saying essentially
12 you may not have some of these specific
13 file reviews, like a three-month review on
14 a weekly basis, but most of the time it is
15 on a daily basis that people are coming in
16 to you to speak about different things?

17 A. If they choose to. I could
18 have an examiner that I don't see for a
19 week. They may come in just to socialize
20 and speak about non-claims-work stuff.

21 So it is not every day that I
22 see them work-related. I could go a whole
23 week without seeing an examiner to discuss
24 any work-related stuff.

25 Q. But would you be in the system

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2 on the alog checking on what they were
3 doing on certain files?

4 A. If that file was up on a
5 three-month review, six-month, 12-month,
6 or 18-month, I have to be in the file as
7 part of my function and they have to do
8 the same as well.

9 Q. There are occasions that you do
10 that as well, though, correct?

11 A. That I do what?

12 Q. When you go into the file and
13 review it when it is not a formal file
14 review time period.

15 A. If something generates for me
16 to be in it or I gave an instruction to
17 move the file to resolution, I would
18 follow up on it to see.

19 And it all depended on the type
20 of examiner that you have. You have some
21 people that you could just tell to do
22 something and you know that it would get
23 done. And you have examiners where you
24 have to follow to make sure that it gets
25 carried out. Because part of the auditing

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2 as well as if instruction was given on the
3 file to move the file to resolution, to do
4 something and it wasn't done, then that
5 could be a downgrade on the file audit.

6 Q. Downgrade on the file audit
7 means what?

8 A. A non-satisfactory audit for
9 both the examiner and myself.

10 Q. So you get downgraded as well?

11 A. It is counted against me,
12 because their goals are pretty much my
13 goals.

14 Q. So it is important for you to
15 make sure your examiners reach their goals
16 because your performance is reflected in
17 that?

18 A. Yes, as well as meeting our
19 business needs, because it is a big part
20 of the goal I have for customer service.

21 Q. When there is a file review
22 done, what is an examiner required to do?

23 A. When there is a SPR audit done?

24 Q. Say a C71 a three-month file
25 review.

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2 A. They are given the summary on
3 that sheet of paper as to whether there is
4 no coverage issues, our coverage is all in
5 place.

6 Q. What sheet of paper? I'm
7 sorry.

8 A. I'm sorry, I was referencing to
9 this (indicating).

10 Q. You are talking about 130?

11 A. Yes.

12 So like part of it where the
13 examiner on 12-7-08 at 9:36 a.m. wrote up
14 a summary, that's basically what I'm
15 reviewing. They are commenting on
16 coverage, whether there was any problems
17 with it, what are our limits.

18 Q. They have to give you a
19 summary?

20 A. Yes, they are writing their
21 summary.

22 Q. They are only required to write
23 it in Claims IQ and then it gets rolled
24 into alog?

25 A. No, this is being done on alog.

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2 Q. So a three-month review is done
3 on alog?

4 A. At this time I believe this was
5 being done in DocMagic.

6 Q. What is DocMagic?

7 A. It is a separate system that we
8 had.

9 Q. What is it used for?

10 A. It is our letter-writing
11 system.

12 Q. When did you first meet Candace
13 Harper?

14 A. 4-28-08.

15 Q. How do you know that?

16 A. That's the day I started as a
17 TA2 supervisor.

18 Q. So you did not know Candace
19 prior to that time?

20 A. Yeah, in GEICO, as an examiner,
21 but I don't remember like the exact date.
22 But in terms of supervising her, that's
23 when I started.

24 Q. You started supervising her on
25 4-28-08?

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2 A. Uh-huh.

3 Q. I believe you said that part of
4 a TA2's job is to investigate a claim,
5 correct?

6 A. Uh-huh.

7 Q. Does that include interviewing
8 witnesses?

9 A. Yes.

10 Q. Does that include interviewing
11 insureds?

12 A. Yes.

13 Q. And claimants as well?

14 A. Yes.

15 Q. Do they ever go to the place of
16 the accident?

17 A. No.

18 Q. So their jobs are done all by
19 telephone?

20 A. Right.

21 Q. Do they ever visit witnesses in
22 person?

23 A. No.

24 Q. Do witnesses ever come into
25 GEICO to speak to them in person?

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2 A. No. Our insureds may choose
3 to, but very rarely.

4 Q. When TA2s are interviewing
5 witnesses, how do they know what to ask?

6 A. It is the question guide they
7 would follow that was once in the paper,
8 but now is in the system.

9 Q. So there is a specific guide
10 within the system that provides questions
11 for them to ask the individuals they are
12 interviewing?

13 A. Right.

14 Q. Do they receive training on
15 that?

16 A. Yeah. Part of the entry level
17 into liability period, like you started
18 that from CSR, how to take a statement
19 from the witness or our insured or a
20 claimant.

21 Q. Are the TA2s or the examiners
22 required to interview the witnesses
23 themselves?

24 A. Yes. It is part of the job
25 function.

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2 Q. But are they required to do it
3 in every instance?

4 A. As they see the need to do it.

5 Q. What is a night call
6 submission?

7 A. Oh, we had a night crew that if
8 they couldn't get a customer during the
9 day, they could refer it to the night
10 crew.

11 Q. Because it is fair to say a lot
12 of people aren't home during the day to
13 speak to, correct?

14 A. Uh-huh.

15 Q. Who is the night crew?

16 A. TA2 examiners.

17 Q. So they are made up -- the
18 night crew is made up completely of TA2
19 examiners?

20 A. Yes.

21 Q. Do these people volunteer or is
22 that their job to work that shift?

23 A. That's their job that they
24 chose to work that.

25 Q. What's a liability floor

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2 assignment?

3 A. A field rep. FLR we call it,
4 field liability rep.

5 Q. And what is that?

6 A. That's the person that has a
7 job function where they are out in the
8 field getting statements.

9 Q. And why would you need a
10 liability floor rep?

11 A. Field.

12 Q. Field rep, I'm sorry.

13 A. Because, like you said before,
14 not every person you can get via the phone
15 even if it is nighttime. So you may need
16 to send someone out to the home address to
17 get them to try to secure the statement.
18 And it is the examiners that assign them
19 to the file.

20 Q. Do you know who Joan Rowland
21 is?

22 A. She is a field rep.

23 Q. When these persons go out,
24 individuals go out and they take the
25 statement, are they required to give you a

1 HARRIS-GRANT

2 written report?

3 A. Not a written. Oh, they do a
4 summary, a closing summary.

5 MS. MCGOLDRICK: Can you mark
6 this as Exhibit 3.

7 (Harris-Grant Exhibit 3 marked
8 for identification.)

9 Q. Would you agree with me that
10 this is an alog?

11 A. Yes.

12 Q. And it looks like it is for a
13 claim 1013? If you look at the numbers at
14 the top, there is a long number that ends
15 in 0103.

16 A. Yes, that ends in 1013, yes.

17 Q. At the bottom, it is Bates
18 stamped with the number 1013, and then it
19 is 0001 through 0041. Do you see that on
20 the very bottom right-hand side?

21 A. Okay, yes.

22 Q. That's how it is marked.
23 So this is an alog?

24 A. Uh-huh.

25 Q. I would like you to refer to

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2 23, please. We have, at the entry at
3 7-17-08, 6:39 p.m., and this note was
4 entered by Joan Rowland?

5 A. Yes.

6 Q. So that was the liability field
7 rep you referred to before?

8 A. Yes.

9 Q. Is this her report of securing
10 a recorded interview with the witness?

11 A. Yes, she summarized it.

12 Q. And then at the end, she says
13 "The witness is well-spoken and makes a
14 good witness"; is that correct?

15 A. Yes.

16 Q. In this case she made the
17 determination that the witness was
18 well-spoken and made a good witness?

19 A. Right, she gave her assessment,
20 her opinion of how the witness came
21 across.

22 Q. So Candace wasn't required to
23 get that interview herself, if she
24 couldn't reach someone, she could refer it
25 out?

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2 A. Yes, that's what it was. She
3 couldn't reach someone. This is a
4 department or someone that she could use
5 to help her secure that. Like Joan made
6 the assessment in terms of how well the
7 person came across. She would have done
8 the same if she secured this.

9 Q. Are TA2s required to order
10 medical records?

11 A. Yes, it is part of their job
12 function. If the attorney says to them
13 that "I'm giving you the authorizations, I
14 want you to get it," then yes.

15 Q. But do they often or sometimes
16 come in through the attorney's office
17 directly?

18 A. Yes.

19 Q. And when an examiner gets
20 medical records in, what are they required
21 to do with those?

22 A. They evaluate it. They break
23 it down, basically in a chronological
24 order from day one of treatment onwards.

25 Q. So they are summarizing the

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2 doctor's conclusions?

3 A. Right. They are reviewing it.

4 Q. Are they required to count the
5 number of treatments received?

6 A. Yes.

7 Q. So do any of the examiners ever
8 speak with the doctors directly?

9 A. No.

10 Q. If they need clarification on
11 medical records, are they allowed to
12 contact the doctors directly?

13 A. Yes, they can.

14 Q. How often does that occur?

15 A. Not very often.

16 Q. If they need clarification, are
17 they required to go to a supervisor first
18 to get approval to contact the doctor?

19 A. No, not at all.

20 Q. But would you agree with me
21 that the examiners are not evaluating
22 causation?

23 A. They are evaluating causation.

24 Q. They are evaluating the cause
25 between the injury and the accident?

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2 A. Yes.

3 Q. I'm talking about the medical
4 records in particular.

5 A. Yes.

6 Q. When they take a medical record
7 and summarize the conclusion of the doctor
8 and they put that summary into the alog or
9 the system, you say that's evaluating
10 causation?

11 A. They have to evaluate
12 causation. They look from day one when is
13 the first date -- was there an emergency
14 room visit, was there any delay with the
15 treatment. You get the entire medicals.

16 And the doctor may sign a
17 signature to something, but in New York
18 State we are so huge where fraud is
19 concerned, and you would think with a
20 doctor putting their name there that
21 everything is A-OK, but you have to read
22 the medical to see did the person mention
23 that they had a chronic history of it.

24 Sometimes the doctors are
25 saying that "This is a long-standing

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2 history of my client, I have treated them
3 before." So causation is a big part.
4 They are evaluating that.

5 Q. Let me put it this way: If the
6 doctor says that the accident caused the
7 injury, then the doctor evaluated the
8 causation, not the examiner?

9 A. The doctor rendered their
10 opinion on whether it did, but at the end
11 of the day, though, the examiner has a say
12 as to whether they believe that that is
13 truly the case or not.

14 Q. And would that be more in
15 alerting or trying to recognize fraud?

16 A. Part of it could be that, but a
17 big part of it is whether we owe it to pay
18 for this injury, whether we owe it to
19 pierce the threshold to put money on the
20 file to resolve it. You can deny a claim
21 to say based on our investigation, we
22 don't believe that the injuries are
23 causally related to the accident.

24 Q. How often does that usually
25 occur?

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2 A. I couldn't give a number. But
3 I have seen denials on it where we have
4 denied for causality.

5 Q. Even if the doctor said there
6 was causation?

7 A. Yes.

8 Q. In those cases, would there
9 normally be an IME involved?

10 A. Well, from the no-fault aspect,
11 that's done. But from the BI part of it,
12 no, we don't do any independent. It is
13 only if the file is in litigation at the
14 Continuing Unit, then you get the
15 opportunity for that. But at the TA2
16 Unit, no.

17 Q. You said TA2s are responsible
18 for determining coverage?

19 A. They do coverage investigation.

20 Q. Would you agree that the vast
21 majority of claims -- in the vast majority
22 of claims, determining whether or not
23 there is coverage is easily done by
24 reviewing the computer data?

25 A. Yes.

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2 Q. So that there are very few
3 instances where coverage issues come up
4 that have to be dealt with?

5 A. Dealt with in what sense? What
6 do you mean?

7 Q. Other than outside of the
8 computer system.

9 A. They look at the system, and
10 based on the information that either the
11 insured or the third party provides to
12 them, they look to see whether there is
13 any permissive use issue, they look at the
14 date of loss. So our claim is like claim
15 files, like via the telephone.

16 Q. But most of the data that they
17 need is right in the system?

18 A. It is right there in front of
19 them.

20 Q. They can look and make a
21 determination based on that?

22 A. Yes.

23 Q. So they don't need to go
24 outside and do -- what kind of possible
25 other investigations would they look to

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2 do?

3 A. They may look to assign SIU to
4 the file. You will find it in cases where
5 like the policy lapsed and then the person
6 pays and there is a new policy effective
7 date, but there was no police report filed
8 for the accident.

9 Q. So they are trying to recognize
10 certain flags?

11 A. Right.

12 Q. When that happens, then they
13 are responsible to refer to SIU, did you
14 say?

15 A. If they determine it needs SIU,
16 they can put SIU on the file.

17 Q. If they don't determine it
18 needs SIU, but there is a potential
19 coverage issue, are they required to come
20 to you to alert their supervisor?

21 A. They can resolve it on their
22 own. If it is something that is outside
23 of, say, their authority level, then they
24 would come in and conference it to say
25 "You know what, I think there is something

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2 here, I can't resolve it on my own, we may
3 need the RLA on it or Claims Home Office."

4 Q. What is outside their policy
5 authority?

6 A. If we are disclaiming coverage,
7 say, for nonpermissive use of the
8 vehicle --

9 Q. What is nonpermissive use?

10 A. Meaning our insured is saying
11 like "Eric didn't have permission to use
12 my vehicle," and they have conducted their
13 investigation, and either they believe or
14 don't believe the insured, they are going
15 to make a recommendation as to whether we
16 should disclaim or handle the claim on its
17 merit.

18 Q. So they make a recommendation.
19 Who do they make a recommendation to?

20 A. They first see me and then they
21 see the RLA and then they speak to Home
22 Office.

23 Q. What is an RLA?

24 A. Regional liability
25 administrator.

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2 Q. So they can't make the
3 decisions themselves, they can make a
4 recommendation, but who makes the ultimate
5 decision?

6 A. In terms of disclaiming
7 coverage, that goes through Home Office.
8 Home Office really has the say on that.
9 Because that's huge to tell someone you
10 are not afforded coverage. But in terms
11 of the late notices, they can do that. In
12 terms of whether there is an implied
13 permissive use, meaning it is a resident
14 relative, they have used the vehicle
15 before, they can waive that on their own
16 and handle that.

17 In terms of whether late notice
18 exists or not, if you have an insured
19 saying "I was never in an accident, so why
20 am I going to be reporting a claim to
21 you," they can make that determination on
22 their own to say there is no late notice
23 issue, even though the date of loss and
24 the report date is, you know --

25 Q. Because those are easy

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2 determinations to make?

3 A. Right.

4 Q. You just mentioned that
5 recognizing fraud is something that the
6 examiners are trained to do?

7 A. Uh-huh.

8 Q. Are the examiners required to
9 review a file to determine if there is a
10 fraudulent claim?

11 A. Every claim that you get, you
12 look to see if there is any fraud
13 indicated.

14 Q. Did the TA2s and the TA1s, do
15 they have a certain requirement to refer
16 over a certain amount of claims to SIU?

17 A. No.

18 Q. Did there used to be a
19 requirement to do that?

20 A. I believe at one point in the
21 goals there was SIU referral goals.

22 Q. When they referred -- those
23 goals we are talking about, SIU referral
24 goals, were those contained, for example,
25 in the TA2 goals for a particular year?

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2 A. They may have been. Anything
3 that was in a goal would have been in this
4 type of format.

5 Q. And were the goals weighted?

6 A. Yes.

7 Q. If they were supposed to refer
8 over a certain amount of claims per year
9 or per month, were those goals met by
10 meeting just the referral or were the
11 claims evaluated?

12 A. I think just by making the
13 referrals.

14 Q. So the quality of the fraud
15 referral wasn't reflected in meeting the
16 goal?

17 A. Not that I know of. But I
18 believe it may have been coached.

19 Q. Coached?

20 A. Like you don't want to see
21 someone referring 50 claims to SIU, but
22 only two got accepted.

23 Q. How does a TA2 know what to
24 look for?

25 A. That is in your claims training

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2 when you start.

3 Q. Is there a list or guide to
4 refer to for certain fraud flags?

5 A. No.

6 Q. Is there anything contained in
7 the system, a list or a guide?

8 A. When they do the referral,
9 there are certain things that they can
10 check off to show that "This is why I
11 think the claim needs to come over, this
12 is why I'm referring the claim to SIU."

13 MR. HEMMENDINGER: Can we go
14 off the record for a second?

15 MS. MCGOLDRICK: Sure.

16 (Luncheon recess: 12:56 p.m.)

17

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2 A F T E R N O O N S E S S I O N

3 1:35 p.m.

4 M A R L E N E H A R R I S - G R A N T,
5 resumed.

6 CONTINUED EXAMINATION

7 BY MS. MCGOLDRICK:

8 Q. You had mentioned when you were
9 talking about some of the responsibilities
10 you have each month, you mentioned a
11 features report. Can you tell me what
12 that is?

13 A. It is just a workload report
14 that shows the number of features closed
15 or completed for the month per examiner.

16 Q. And when you say "features
17 closed," what does that mean?

18 A. That they actually closed the
19 feature.

20 Q. What is a feature?

21 A. It is a symbol that represents
22 a type of claim being made. So, say, if
23 it is a bodily injury claim for a third
24 party, it would be an RBI feature. If it
25 is for a first party UM claim, it would be

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2 a UBI.

3 Q. Are there other features, too,
4 like --

5 A. Collision, property damage,
6 yes.

7 Q. You are tracking how many
8 features on a monthly basis your examiners
9 close?

10 A. Right.

11 Q. Is there a specific requirement
12 that they meet each month?

13 A. Depending on the goal for that
14 year or for the month.

15 Q. Again, that reflects in your
16 performance review if they can meet those
17 goals?

18 A. Yes.

19 Q. You mentioned piercing the
20 threshold?

21 A. It is meeting the New York
22 State verbal threshold, whether the claim
23 meets it or doesn't meet it.

24 Q. Do TA2s have the authority to
25 approve the piercing of the threshold?

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2 A. Yes.

3 Q. They do not need supervisory
4 authority to do so?

5 A. No.

6 Q. Is that something new or has
7 that been there all along?

8 A. It has always been.

9 Q. No TA2 needs to come to you to
10 approve the piercing of the threshold or
11 the non-piercing of the threshold?

12 A. When they are going through the
13 orientation phase of the job, yes, they
14 would see a supervisor.

15 (Harris-Grant Exhibit 4 marked
16 for identification.)

17 Q. This is marked claim number
18 1103, page number 162, it is entitled a
19 claim evaluation short form; is that
20 correct?

21 A. Yes.

22 Q. Can you tell me what a claim
23 evaluation short form is?

24 A. It is a summary of the
25 examiner's medical evaluation of the

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2 claim.

3 Q. It says "negotiation action
4 plan" down in the bottom box, the last
5 box?

6 A. Yes.

7 Q. What is a negotiation action
8 plan?

9 A. That contains the summary that
10 they have written up.

11 Q. Would an examiner complete a
12 claim evaluation short form when they are
13 ready to negotiate settlement of the
14 claim?

15 A. Yes.

16 Q. Would it be done anytime prior?

17 A. Yes, as the medicals come in.

18 So say the attorney is sending it in,
19 pieces at a time, they would just keep
20 updating it as it comes in.

21 Q. And is this a separate form
22 that's not on the Claim IQ system?

23 A. It is within the Claim IQ and
24 they just click a button to print out what
25 they inputted.

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2 Q. Now, if you look at page 2, at
3 the bottom of the negotiation action plan
4 where it ends, it says "recommend to
5 pierce the threshold based on limitation
6 more than 90 days from the date of loss";
7 is that correct?

8 A. Yes.

9 Q. And Ms. Harper is the primary
10 adjuster on this claim, right, at the top
11 on page 1?

12 A. Yes.

13 Q. So would that mean she authored
14 that?

15 A. Yes.

16 Q. And then we move down and there
17 is a section that says Offers and Demand.
18 Do you see that?

19 A. Yes.

20 Q. Now, is that your handwriting?

21 A. The offer and demand would be
22 the examiner's, it would be hers.

23 Q. Where it is signed?

24 A. Right where it is signed? I'm
25 sorry, you are talking about --

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2 Q. Where it says Offers and
3 Demands, the very bottom box.

4 A. Yes.

5 Q. So that's your signature?

6 A. Yes.

7 Q. Does it say "pierce threshold
8 based on positive ortho IME"?

9 A. Yes.

10 Q. What's the remainder of this?

11 A. "For cervical spine, lumbar
12 spine, thoracic spine on 8-5-08 with
13 treatment up to 10-27-08."

14 Q. So you were authorizing --
15 approving her recommendation that the
16 threshold be pierced?

17 A. Yes.

18 Q. You just told me that TA2s do
19 not need authorization to pierce the
20 threshold?

21 A. Right.

22 Q. Then why are you approving the
23 threshold being pierced here?

24 A. Because it was a file
25 conferenced with me with her

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2 recommendation. They can pierce prior to
3 coming in to see me. There is a section
4 within the Claim IQ where the examiner
5 selects pierce, non-pierce, or it could be
6 a compromise, meaning a business decision
7 where it is a borderline pierce.

8 Q. They can enter that into the
9 system as pierced?

10 A. They can enter that into the
11 system, and if they choose to, they can
12 settle it within their authority. If the
13 examiner wants to come to me to conference
14 a file for settlement and negotiation,
15 they can do that as well.

16 Q. Why would they come to you if
17 they have the authority to do it without
18 coming to you?

19 A. Because it is a choice.

20 Q. But if they are able to do it
21 on their own, what would be the reasons
22 that you find that they come to you to
23 conference the file?

24 A. A lot of times it is either if
25 they just wanted my stamp of approval on

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2 it, a second eye on it, like a second
3 opinion.

4 Sometimes we would end up
5 round-tabling it, maybe speaking to
6 another supervisor or upper-level
7 supervisor or even my manager to say we
8 are not sure, what do you think even in
9 terms of the dollar value, we would
10 discuss that or the causality behind it.

11 If it is a file where, say,
12 liability was being argued and there is
13 some type of disagreement, we would also
14 speak to other people to see how do we
15 think we would fare in this venue.

16 Q. So when they have questions on
17 the file, they come to you?

18 A. Yes.

19 Q. In this instance, she was
20 seeking your approval for the piercing of
21 the threshold?

22 A. Yes.

23 Q. And she simply wrote at the top
24 "I recommend to pierce the threshold based
25 on limitation of more than 90 days,"

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2 right?

3 A. Yes.

4 Q. Then you said, in the bottom,
5 "pierce the threshold based on positive
6 ortho IME."

7 So that meant that you were
8 required to go in and read the medical
9 information to form your own opinion as to
10 whether or not to pierce?

11 A. I read her summary that she
12 had, and within the summary it said there
13 was a positive IME.

14 Q. It didn't say that in her
15 recommendation, did it?

16 A. No, it just said based on 90
17 days.

18 Q. So you had to go back and read
19 the information yourself to form your own
20 opinion as to whether or not her
21 recommendation was correct?

22 A. It is based on what she
23 presented to me. It is a face to face
24 conference and we are reviewing --
25 basically how it happens is we sit pretty

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2 close in proximity to each other.

3 I say "What do we have?" The
4 person would say "You know what, it is a
5 threshold value. I'm working with this
6 firm. They are either difficult, not
7 difficult. I have already started
8 discussing it. They are in the high
9 double-digits. This is what I'm looking
10 at." The person would walk me through the
11 meds. But I'm not taking the medical
12 specialist and reading it, I'm reading the
13 summary that is written here.

14 So she said she is piercing it
15 based on the limitations more than 90
16 days. I picked out of this and said
17 "Well, a stronger argument is a positive
18 IME." It is an independent medical
19 examination. It is not that she is
20 incorrect, but we have to take that into
21 account as well.

22 Q. But you didn't agree with --
23 you thought there was more reasons to
24 recommend piercing the threshold than she
25 had laid out to you?

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2 A. Not necessarily. It is not a
3 disagreement, to be honest with you. It
4 is just my basis based on me looking at it
5 and what she presented.

6 I said "Okay, if this was
7 something that went to the court, the
8 positive IME would have a heavier weight
9 than just the treatment."

10 Q. You pointed that out and you
11 gave your approval based on that?

12 A. Yes.

13 Q. Now, in this claims evaluation
14 short form, you said that this is on the
15 computer?

16 A. Yes.

17 Q. And it could just be printed
18 out?

19 A. Yes.

20 Q. In every instance that you are
21 looking at a claims evaluation short form,
22 are you sitting with the examiner?

23 A. If they are conferencing the
24 file with me.

25 Q. But on other occasions you can

1 HARRIS-GRANT

2 be looking at it and you are not sitting
3 with them?

4 A. Right.

5 (Harris-Grant Exhibit 5 marked
6 for identification.)

7 Q. Would you agree with me this is
8 essentially a snapshot of the Claims IQ
9 screen?

10 A. Yes.

11 Q. It is marked claim 1103 pages,
12 42 through 70. Do you see that?

13 A. Yes.

14 Q. So if we go to page 56, please,
15 in the middle, it says "determine tort
16 threshold factors."

17 Now, are these the screens that
18 you were talking about earlier?

19 A. This is one of the screens.

20 Q. So are these the statutory
21 factors that determine whether or not the
22 threshold is pierced?

23 A. Yes.

24 Q. So the examiner is required to
25 go to a pull-down memo and yes or no to

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2 each one of these questions, correct?

3 A. Yes.

4 Q. Here it is no to all except
5 impairment for 90 of the first 180 days?

6 A. Yes.

7 Q. Then if we go to the next page,
8 we see "evaluate threshold decision," and
9 it says "pierced."

10 Is this what you were talking
11 about when Candace made the decision to
12 pierce it in the system?

13 A. Yes.

14 Q. Then there is a
15 computer-generated portion that says "see
16 supervisor." Why would it say "see
17 supervisor" if your approval is not
18 required?

19 A. I'm not sure. There is a lot
20 of things within the system that we are
21 not held to or that we don't even look at,
22 to be honest with you.

23 Q. But where it says "see
24 supervisor" and Candace had it in her
25 file, she would have to go to see you?

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2 A. No, she didn't have to.

3 Because even just a look at where it says
4 "general pain and suffering" and where it
5 says, like under "Recommend," and it says
6 the \$8,850, I was just trying to point out
7 to say not everything that is within the
8 system do we adhere to and go through and
9 say that this is mandatory.

10 Q. I'm sorry, go back to that.

11 A. You were saying where it says
12 "recommend see supervisor," and you asked
13 me doesn't that mean that, and I said no.
14 You know, you somewhat seemed to have
15 scoffed at it.

16 I'm trying to explain to you
17 that not everything within here means that
18 it is mandatory and that you are adhering
19 to it. I was just giving you as an
20 example that, for instance, the dollar
21 amount, it is there, but we don't even
22 look at it. It is not even paid attention
23 to in terms of the value there that the
24 system generated.

25 Q. So the whole point in having

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2 this system is to guide you as a tool,
3 correct?

4 A. Right.

5 Q. If they are giving you a value
6 or a range, you don't look at it or take
7 it into account?

8 A. No. Because basically the
9 system is there just as a guidance. You
10 are using your claims judgment, your
11 claims experience and what it is that you
12 know outside of the system.

13 Q. This is a pretty sophisticated
14 system, isn't it?

15 A. I don't have anything to
16 compare it to to say whether it is or
17 isn't.

18 Q. Prior to the system coming into
19 effect and everything was in paper form,
20 now all of this is done on the computer?

21 A. Right.

22 Q. Isn't that a pretty
23 sophisticated system to be able to
24 generate outputs and generate ranges?

25 A. It is much better than having

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2 to rely on a paper form where you could
3 lose the paper or someone's handwriting
4 isn't clear enough that you wrote when you
5 have something that anyone can go into as
6 a reference.

7 (Harris-Grant Exhibit 6 marked
8 for identification.)

9 Q. This is another claim
10 evaluation short form. It is also for
11 claim 1013. It starts on page 110 through
12 111.

13 Again, the primary adjuster is
14 Candace Harper and the claimant is Alyssa
15 on the first page?

16 A. Yes.

17 Q. If we go to the second page, at
18 the top, it says "no threshold." Do you
19 know whether or not Candace entered that
20 information?

21 A. She is the primary adjuster on
22 the top of the short form. Then you would
23 have to look at the footprint to see. But
24 I would take that most likely it is her.

25 Q. You say when you have to look

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2 at the footprint, that would be the
3 snapshot?

4 A. Yes.

5 Q. So it says "no threshold," but
6 it doesn't provide any reason for the
7 recommendation?

8 A. Uh-huh.

9 Q. Would you agree with me?

10 A. Yes.

11 Q. And then we go back down to
12 Supervisor Manager/RLA Authority. What is
13 the Supervisor Manager/RLA Authority
14 required for?

15 A. It should be the same, it is
16 the same thing as in that box area. I'm
17 not sure, because a manager isn't signing
18 off on these or an RLA. So this would be
19 one of those things that I'm saying again
20 is in the system and it is not necessarily
21 used.

22 Q. But the one that I just showed
23 you and this one were used in this
24 instance, correct?

25 A. The Supervisor Manager/RLA

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2 Authority, in the other one it looks like
3 I signed it in the offer/demand, and in
4 this one I'm signing in the manager/RLA.
5 More than likely I just signed there
6 because it was the first box available.

7 Q. You are giving your authority
8 in both instances?

9 A. Right, based on the
10 recommendation.

11 Q. So here it says "Okay to deny
12 for no" -- is that "treatment"?

13 A. "No T seen in meds."

14 Q. Is that "treatment"?

15 A. "No threshold seen in meds."

16 Q. And it is signed by you on
17 2-25-09?

18 A. Yes.

19 Q. Again, Candace doesn't give a
20 reason for the no threshold
21 recommendation, so you would have to
22 evaluate the information she provided in
23 making the decision whether or not the
24 threshold had been pierced?

25 A. I disagree with that. We are

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2 conferencing, having a face to face
3 conference, and the examiner is walking me
4 through the medicals and why it is the
5 person made the recommendation to say that
6 it is a no threshold or not.

7 Q. Why did you feel it was
8 necessary to put the reason for the no
9 threshold denial?

10 A. It is not really a reason. I'm
11 just saying based on the medical specials
12 presented, that there is no threshold
13 limit.

14 Q. In this case, the claim was
15 being denied, correct?

16 A. Yes.

17 Q. What occurs when a claim is
18 denied?

19 A. Well, the examiner just goes
20 back and mails out the letter. Normally
21 they had the conversation already with the
22 attorney and heard or listened to the
23 attorney's counterargument as to whether
24 there is more meds, why they disagree, if
25 they disagree, or whether or not they

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2 agree.

3 It could be they are just going
4 in to mail out a denial letter and could
5 be probably closing the file.

6 Q. When you are conferencing the
7 file on that claim evaluation, you go
8 through all the arguments that the
9 attorney made with the examiner in order
10 to determine whether or not the
11 recommendation to not meet the threshold
12 was correct?

13 A. I go by what the examiner has
14 presented to me and what the examiner said
15 the attorney reported. Oftentimes it
16 could have been a verbal, I just got off
17 the phone with them, I'm going to document
18 it when I get back. Or I spoke to them
19 last week, this is what they are saying.
20 They disagree, or, you know, they agree
21 with me or they are asking for nuisance
22 value, stuff like that.

23 Q. So you said that if there is a
24 denial for no threshold, then a denial
25 letter is sent?

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2 A. Yes.

3 Q. Is that a standard form letter?

4 A. Yes.

5 Q. Is it somewhere in the system?

6 A. Yes.

7 Q. So Candace didn't draft the
8 letter herself?

9 A. She is the one pulling it up
10 and entering the information that she
11 needs to enter, but the language part of
12 it that breaks down in No. 5 where the
13 reasons were for not meeting it, like
14 that's outlined, like within the body of
15 the letter, instead of an examiner having
16 to retype that verbatim, it is
17 automatically there.

18 Q. You mean a statutory?

19 A. Yes, a statutory.

20 Q. Is it a form letter otherwise,
21 she adds the name?

22 A. She adds the name, the client's
23 name, and you could edit the letter, too,
24 to point out other specific stuff.

25 (Harris-Grant Exhibit 7 marked

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2 for identification.)

3 Q. Would this be considered one of
4 the form denial letters?

5 A. Yes.

6 Q. This is signed by Candace
7 Harper?

8 A. Yes.

9 Q. Is this something that you pull
10 up -- did you say it was
11 in the DocMagic system?

12 A. Yes.

13 Q. It basically says "To Whom It
14 May Concern: We have reviewed the medical
15 records for the injuries sustained by your
16 client in the above-mentioned accident.
17 We do not feel that the injuries meet the
18 definition of 'serious injury' as defined
19 by the insurance law." And then it
20 describes the insurance law.

21 A. Right.

22 Q. So that is pretty much a form
23 letter and there is nothing significant as
24 to the claim?

25 A. But it can be edited.

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2 Q. But in this case it was not?

3 A. No.

4 Q. I believe you also said one of
5 the duties of an examiner is to determine
6 liability?

7 A. Yes.

8 Q. Does a TCR2 and TCR1 use Claims
9 IQ in making this determination?

10 A. They make their own
11 determination, because they have to fill
12 out the subjective area and render their
13 own decision and negotiate the file on
14 their own, but in terms of what I said
15 before, the question guide in terms of the
16 recorded statement that they are entering
17 the police report, they will enter.

18 Q. Did Candace have the authority
19 to determine the liability percentage
20 without using Claims IQ?

21 A. Yes.

22 Q. So she wouldn't have to enter
23 any of that information in Claims IQ, she
24 could just come up with a number on her
25 own?

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2 A. Yes, she could do that if she
3 wants to, but the system is there to use
4 as a tool and as a guide to do that. But
5 there is so many things that is not within
6 the system, like scene photos. If you
7 take a look at the scene photos, there is
8 no area to enter that to say whether it
9 was a two-lane road or not. Those are
10 things that is not within the system. How
11 someone comes across to you, whether they
12 are a credible witness, not credible, do
13 they testify on their own or not.

14 There is so many things not
15 within there. It just houses the question
16 guide and like a police report, and then
17 they render how the person came across in
18 terms of the duties that were owed.

19 Q. So if Candace got a new file
20 that came in, she could just go through
21 the information, not enter any information
22 in Claims IQ and decide to negotiate up to
23 her authority?

24 A. She can do that, yes.

25 Q. So the file does not have to be

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2 tracked through Claims IQ at all?

3 A. It is there for them to utilize
4 and to use. But she can do it if she
5 chooses not to use it, but that's not how
6 they were trained. They are trained to
7 say you should house the information so
8 that anyone picking up that file can see
9 how you arrived at your decision, did you
10 take a recorded statement from all of the
11 parties that you needed to, did you secure
12 the police report, if it was necessary to
13 do so. And then whatever else was added
14 within the system.

15 Q. That's also a way that you have
16 to review and audit and monitor the file,
17 if the information is not in Claims IQ,
18 you can't do that?

19 A. In terms of how you are saying
20 like review, audit and monitor, we do the
21 SPR audit to make sure we are within the
22 guidelines and they are doing what they
23 are supposed to do according to the claims
24 manual to investigate the claim, resolve
25 it quickly, and in a fair manner.

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2 You know, that's what the alog
3 is about, them documenting what they did
4 and the steps and how they arrived at
5 their decision and the Claim IQ is there
6 as a tool.

7 Q. But you are saying that they
8 don't have to use it?

9 A. If someone bypasses it and says
10 "This is what I'm doing," but they justify
11 on the alog what they did, then that's a
12 different story. They can do that.

13 Q. So if they do it without going
14 through Claims IQ, they have to justify it
15 somewhere else?

16 A. They would document the file to
17 say "I didn't use it because," whatever.

18 Q. And how often does that
19 normally happen?

20 A. It can happen. If they
21 probably documented the system was down.
22 I normally see it like if the system was
23 down or someone just chooses to not use
24 it. It does happen.

25 Q. Let's go back to the claims

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2 snapshot, which is Exhibit 5, please. Can
3 you turn to page 49.

4 If they are going to use Claims
5 IQ to assess the liability, would they
6 start here at the Liability Assessment
7 screen?

8 A. Yes.

9 Q. So we see at the top it says
10 Liability Assessment, then Determine
11 Scenario, so it must have been a
12 pedestrian, correct?

13 A. Yes.

14 Q. Would Candace have entered that
15 information?

16 A. Yes.

17 Q. And then we have Review Parties
18 for the Negligence Evaluation and they
19 list the parties and their role and their
20 description, right?

21 A. Yes.

22 Q. Then the next section is
23 Determine Duty Breaches and Proximate
24 Cause.

25 Now, we have a list of what

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2 appears to be rules of the road; is that
3 what it is?

4 A. Yes.

5 Q. Then we have a section that is
6 entitled Breach and Proximate Cause. And
7 we have five boxes. I'm assuming that is
8 no breach; yes, breach, but no proximate
9 cause; yes, breach, low proximate cause;
10 yes, breach, medium proximate cause; yes,
11 breach, high proximate cause. Is that
12 what that is?

13 A. Yes.

14 Q. Now, who makes the
15 determination as to the breaches and the
16 proximate cause?

17 A. The examiner.

18 Q. Are there breach determinations
19 ever made when conferencing the file?

20 A. Maybe if the person is going
21 through orientation and they are not used
22 to, like, say, this is a good example of a
23 pedestrian case and you sit with your
24 supervisor and you are like "Listen, this
25 is what my investigation yielded" and they

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2 want to walk through it with you, then
3 yes, they may choose it. But the vast
4 majority don't. As the supervisor, you
5 are seeing this well after the fact.

6 Q. So you don't often sit with the
7 examiners to discuss the breaches?

8 A. No.

9 Q. If you do sit with the
10 examiners to discuss the breaches, do you
11 ever change the breaches in the system as
12 you go along?

13 A. Me personally, I may click
14 something, yeah.

15 Q. And change the breach?

16 A. Yes, based on my conference
17 with them.

18 Q. And would you do that yourself
19 or instruct them to do it?

20 A. They would either do it
21 themselves or it is something we reviewed
22 and agreed to and we would do it as we go.

23 But it is not me picking it up
24 and overriding it. It is usually at their
25 request we are conferencing the liability,

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2 and it may be the attorney disagreeing and
3 they are giving me what the attorney is
4 arguing, and I may say "I agree with that,
5 did you take this into account or that
6 into account." But that is very rare when
7 that happens.

8 Q. Let's go to page 51. It says
9 Liability Decision, Evaluate Liability.
10 And you see under "Kim," the percentage is
11 computer-generated to 33 to 53 percent; is
12 that right?

13 A. Yes.

14 Q. And then in the next Evaluate
15 box, it says 50 percent. Who determines
16 what number goes in there?

17 A. The examiner.

18 Q. And how does the TCR2 know what
19 number to enter?

20 A. Based on their claims
21 experience and their decision to do that.

22 Q. Can they randomly pick a number
23 between that range and enter it in there?

24 A. Yeah, or even outside of it if
25 they choose to.

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2 Q. So they can pick a number
3 outside of the range as well?

4 A. Yes.

5 Q. And if she picks a number, is
6 she required to justify or document her
7 choice?

8 A. She would just document it. So
9 that the thing is with our claims file,
10 any one person who might be out on
11 vacation, out sick, on FML, anyone should
12 be able to pick up the file and understand
13 what transpired and what went on.

14 The examiner as part of the
15 claims handling would document liability
16 based on XYZ.

17 Q. So it is important to complete
18 the Claims IQ form?

19 A. Yes.

20 Q. And how many open files do
21 TCR2s normally have on a daily basis?

22 A. I could do it by probably a
23 year. I would say over 150 or so of
24 actual files.

25 Q. So they have a lot of cases

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2 pending at one time, right?

3 A. Yeah, I would say so.

4 Q. So they have a busy caseload?

5 A. Yes.

6 Q. Would it be possible that more
7 often than not they just pick a number
8 because they can pick that number and they
9 are not evaluating that claim?

10 A. Can someone do that? Yes. But
11 is that supposed to happen? Absolutely
12 not. That would go against every training
13 that anyone in the insurance industry is
14 given.

15 Q. If they are provided a guide,
16 though, a range, 33 to 53 percent, and
17 they are busy and they pick a number in
18 between, then they may not feel as if they
19 are doing anything wrong?

20 A. That would be on the
21 individual. Then, again, they have
22 someone that they have to go negotiate it
23 with, be it an adverse carrier, an
24 attorney, or our insureds, that you have
25 to explain to our customer why did you

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2 come up with that liability assessment.

3 They are doing that on their own.

4 I don't think anyone would just
5 randomly pick a number and throw it in
6 there, because they have to give an
7 account to the insured or whoever they are
8 going to negotiate the file with.

9 Q. If they randomly pick a number
10 between the range given, then they can use
11 that as reasoning for why the percentage
12 is what it is?

13 A. What they would use, that the
14 range gave that to them? That wouldn't
15 justify. They would be doing it based on
16 their breaches and how they assessed it.
17 That's what they would be using to
18 negotiate it with our customer or third
19 parties.

20 Q. So they entered breaches, and
21 the breaches that they entered, the
22 computer generated an amount. So if they
23 pick an amount within that range, how is
24 that unfair claims handling, if they don't
25 have to justify the actual number that

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2 they picked?

3 A. They have to justify the actual
4 number that they picked.

5 Q. Where do they justify that?

6 A. Where they chose the breaches
7 and what degree each interested party
8 breached it to.

9 Q. You just told me once they
10 entered the breaches and the computer
11 generates the amount, there is a range in
12 this of 20 percent. You told me they
13 could enter a number lower or higher, it
14 is their choice.

15 Well, if the value that is
16 arrived at through their breaches, how can
17 they explain that the liability assessment
18 that came out was between a certain range,
19 but they are picking something else?

20 A. Because the Claim IQ doesn't
21 contain everything, all aspects of their
22 investigation. They are assessing
23 credibility. There is no area in here
24 that says this person was credible or not
25 credible. They are using that. They are

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2 using scene photos, if they got that or
3 not, and it is good to have it. So they
4 would be using that as well in their
5 judgment and assessment.

6 The bottom line is no one is
7 trained, it would be just unfair and not
8 good claims handling to just choose a
9 random number. You are doing your
10 breaches, as an examiner that is your
11 evaluation to say this duty was owed, it
12 was breached by this person, to what
13 degree or not degree, or no degree at all.

14 Q. But you have no way of knowing
15 whether or not the number that they
16 actually picked was random?

17 A. I couldn't say, based on their
18 summary that they are giving to me, and,
19 you know, they have to negotiate the
20 files.

21 Q. Can we go back to Exhibit 3,
22 please. At some point before authority is
23 given on a file to settle a claim up to a
24 certain amount, will you review the
25 liability percentage determination?

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2 A. I would look at the three-month
3 review to see was liability already
4 resolved or not, and if it wasn't, what
5 was the hold-up for it and what was
6 evaluated, whether it was fair or not.

7 Q. If we go to page 3, please. On
8 2-21 at 9:17 p.m. there is a negotiation
9 strategy snapshot entered. Do you see
10 that?

11 A. Yes.

12 Q. If you go to the next page, was
13 that entered by Candace Harper?

14 A. Yes.

15 Q. And in this negotiation
16 strategy, it says "liability, 33 percent"?

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. Then we move up to 2-25-09 at
21 2:13 p.m. Is that a note entered by you?

22 A. Yes.

23 Q. So it says -- and this is for
24 Jamie, pedestrian Jamie again -- it says
25 "Briefly discussed claim for this

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2 interested party or injured party"?

3 A. Yes.

4 Q. "Examiner will revisit
5 liability with scene photos."

6 So upon review you disagreed
7 with the liability determination of 33
8 percent, right?

9 A. Upon review with her, I
10 realized that her liability investigation
11 was incomplete because she did not review
12 scene photos to make her liability
13 determination or to assist with it.

14 Q. So you disagreed with her
15 liability determination?

16 A. It is not necessarily that I
17 disagreed with it. It is the fact that
18 upon reviewing the file with her,
19 especially in a pedestrian case when you
20 are conferencing a file with an examiner,
21 your first thing is going to be is there
22 any coverage issue, okay, liability, is
23 the attorney going to be surprised by the
24 liability or not, was that already
25 discussed with the attorney, this is a

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2 pedestrian case, did we speak to our
3 insured, how did they come across, what
4 venue are we in and what was used in your
5 liability determination.

6 And if I'm looking and seeing
7 that this was a pedestrian case and no
8 scene photos, I would say "You need to
9 take another look at it, look at the scene
10 photos to make sure your liability that
11 you have is solidified."

12 Q. But you found that there was
13 something --

14 A. Missing.

15 Q. Missing?

16 A. Yes.

17 Q. So then we have -- it appears
18 if you go up to Saturday, 3-7, an entry
19 from Candace Harper at 9:46 a.m.

20 So she was basically getting
21 the photos that you asked. She did review
22 Google Maps, and which photos "showed
23 there was a defined crosswalk for peds, as
24 policyholder stated in her recorded
25 interview."

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2 Is that something that Candace
3 had missed, the policyholder had told her
4 that there was no crosswalk?

5 A. She is saying that there is a
6 defined crosswalk for the pedestrian, as
7 policyholder stated in her ROI.
8 Pedestrians were not in the crosswalk.

9 Q. So based on that, she was going
10 to redo her breaches, which means what?

11 A. She is retaking another look at
12 everything and she has decided that she is
13 going to change it or not change it. Did
14 she say whether she changed it here?

15 Q. She doesn't say. I don't
16 believe so.

17 So then would that be fair, if
18 we go back to Exhibit 5, page 51, now,
19 would this be the redo of those breaches,
20 the result after?

21 A. We would have to look at the
22 footprint to see whether or not the
23 breaches were redone. I don't know if the
24 breaches were redone. She may have just
25 typed over what she had in there. I may

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2 not even know whether she had 50 from
3 before or not.

4 Because sometimes, given my
5 history with this person, you may see 1
6 percent on a file and you look someplace
7 else and there is something else and you
8 are like "Which is your liability, is it
9 50 or is it X number?" So I'm not sure.

10 Q. Why don't we go to page 43 of
11 Exhibit 5. Is this what you were talking
12 about?

13 A. Yes.

14 Q. So I think if we look down at
15 the bottom on 3-7-2009, it says "decision
16 Jamie, 33 percent deleted"?

17 A. Yes.

18 Q. Does that mean she deleted the
19 33 percent liability and changed it?

20 A. Yes.

21 Q. So the Exhibit 4, the claims
22 evaluation short form we were looking at,
23 is essentially -- I'm sorry, not Exhibit
24 4.

25 Go back to Exhibit 5, back to

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2 page 51, so when we have that 50 percent
3 determination, so is that essentially the
4 redo of the breaches?

5 A. Yes.

6 Q. So once she redid the breaches,
7 a new range came out, between 33 and 53?

8 MR. HEMMENDINGER: I'm sorry,
9 that's a different person, the 50 percent.

10 Q. If we go back to the front,
11 3-7-2009 she also deletes the 33 percent
12 for Alyssa?

13 A. Yes.

14 Q. So if prior to that all three
15 of them were 33 percent liable, this is a
16 redo of her breaches that reflects now a
17 different percentage, correct?

18 A. Yes.

19 Q. And then she had resubmitted
20 that for conference to you, if you look at
21 alog on 3-7-09?

22 A. Yes.

23 Q. Why would she need to resubmit
24 it for conference if she is not required
25 to do so?

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2 A. It looks like we started to
3 conference 03, Jamie, and then she took
4 another look at the liability. From this
5 she changed it and then she is coming back
6 in to review the claim.

7 Q. Why would she need to come back
8 in to review?

9 A. I'm not sure. Because I'm not
10 documenting for her to come back to see
11 me.

12 Q. And then on Wednesday, 3-25 at
13 9 a.m., Supervisor Note, it is at the top
14 of the page, "Conferenced file and gave
15 settlement authority as noted in the file
16 based on liability reassessed and meds on
17 file."

18 A. Yes.

19 Q. So you can't give settlement
20 authority until liability assessed is
21 approved?

22 A. Well, the liability, you do all
23 cases at 100 percent, in terms of the
24 value, then liability is assessed to it.
25 So the liability, you would had to have

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2 resolved that and made sure at some point,
3 you know, that you are comfortable with it
4 and then your percent is applied to
5 whatever value.

6 Q. Because that number is
7 important going forward to get a value of
8 the claim, right?

9 A. Not a value of the claim. To
10 make sure that whatever settlement that
11 you are going to make with the attorney,
12 that you are on board, your liability is
13 solid, that you properly investigated and
14 looked at all aspects of the claim.

15 So when we look at every claim
16 in terms of value, it is always looked at
17 at 100 percent. Then the examiner applies
18 the percent net to it and that rolls down.
19 But all claims, just to add a little bit,
20 we have a say in claims where we say
21 claims begin with coverage liability
22 damages. So your coverage had to have
23 been investigated, properly resolved, your
24 reliability properly investigated and
25 resolved, and then you evaluate the

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2 damages portion, which is the case value.

3 Q. But you had to agree on a
4 liability because the liability percentage
5 is used to determine settlement value?

6 A. The liability percentage rolls
7 out the number, right.

8 Q. And it is reduced accordingly?

9 A. Right.

10 Q. When are reserves set on a
11 file?

12 A. At a three-month marker is the
13 normal time to set a reserve.

14 Q. Who sets reserves?

15 A. The supervisor.

16 Q. Do examiners have any authority
17 to set or reset reserves on file?

18 A. Yes.

19 Q. When do they have authority to
20 do that?

21 A. They can do it mostly on
22 property damage claims they would do that,
23 like to reopen a PD feature and post a
24 reserve.

25 Q. Can they do that on bodily

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2 injury claims?

3 A. I don't see it being done. And
4 to be honest with you, it is not that I
5 don't know if they have the authority, I
6 believe they can, but most three months
7 are on stat and it comes to the
8 supervisor, meaning there is an underlying
9 dollar amount, but it doesn't show a
10 dollar-dollar amount. Like it says stat
11 versus a true dollar figure.

12 (Harris-Grant Exhibit 8 marked
13 for identification.)

14 Q. Can you go to page 6, Chapter
15 3. It talks about reserves.

16 A. Guidelines for Establishing
17 Reserves?

18 Q. Yes. It says "Reserves are
19 subject to the guidelines listed in the
20 next section with the requirement that the
21 responsibility for establishing and
22 maintaining all case reserves is vested
23 with the supervisors, managers, directors
24 RLAs and AVPs. This responsibility cannot
25 be delegated and the authorizing party

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2 should review thoroughly the file content
3 prior to extending reserve authority. A
4 supervisor, manager, director, or RLA must
5 authorize all reserves under bodily
6 injury, uninsured and underinsured
7 motorists bodily injury coverage."

8 Is that what it says?

9 A. Yes.

10 Q. So can examiners change or set
11 reserves?

12 A. In terms of this, it is saying
13 on BI features, they can't.

14 Q. So in bodily injury claims,
15 they can't?

16 A. They can't. This is what this
17 is saying on property damage. It doesn't
18 say anything, so they should be able to.

19 Q. On property damage, but not on
20 bodily injury?

21 A. Uh-huh.

22 Q. Are adjustments normally made
23 to the reserves as the claims handling
24 proceeds?

25 A. Yes, based on the claims

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2 handler's recommendation and the
3 information as they obtain as the file
4 ages.

5 Q. What kind of recommendation do
6 they make?

7 A. They could say I need you to
8 post the policy or the file needs to be
9 transferred up to a higher level or you
10 can reduce the reserve or I need it to
11 increase, because I now have an MRI that
12 shows a knee tear or there is a couple of
13 positive IMEs or the file is now 12 months
14 old and I know the person has been out of
15 work all this time. So the reserves need
16 to go up.

17 Q. And how often does that occur?

18 A. It occurs frequently.

19 Q. Does the ultimate
20 responsibility for that decision rest with
21 you?

22 A. With the examiner.

23 Q. To change the reserves?

24 A. Uh-huh.

25 Q. The ultimate responsibility

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2 rests with the examiner?

3 A. To make the recommendation to
4 change a reserve.

5 Q. But who has the authority to
6 change the reserves?

7 A. The supervisor does.

8 Q. So the examiner doesn't have
9 any authority to change the reserves, they
10 can only make a recommendation?

11 A. Yes.

12 Q. If we go back to the snapshot,
13 please, which was Exhibit No. 5, page 57.
14 Under "Evaluate Injury Damages" -- do you
15 see where I'm at?

16 A. Yes.

17 Q. Now, under here we see damages
18 submitted, recommended, and there are
19 pull-down menus. I assume that's for the
20 examiners to add information?

21 A. Yes.

22 MR. HEMMENDINGER: Off the
23 record.

24 (Discussion off the record.)

25 BY MS. MCGOLDRICK:

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2 Q. There is nothing entered at
3 this point in the top three?

4 A. They have zeros keyed in. It
5 comes blank.

6 Q. It comes blank and you have to
7 key it in?

8 A. Yes, the examiner keys it in.

9 Q. We have under "Generals: Pain
10 and Suffering," there is a
11 computer-generated range; is that right?

12 A. Yes.

13 Q. And that says \$8,650 to
14 \$12,000?

15 A. Yes.

16 Q. Is that range based on
17 information that was input earlier?

18 A. Yes.

19 Q. And then we have a number
20 entered of \$7,500?

21 A. Yes.

22 Q. Who would have put that number
23 in there?

24 A. The examiner.

25 Q. How is \$7,500 determined?

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2 A. The examiner, based on their
3 claims experience and their evaluation of
4 the medical specials.

5 Q. This number is lower than what
6 has been estimated to be the range?

7 A. Yes.

8 Q. Is that a mistake or something
9 they are allowed to do?

10 A. They are allowed to do that.

11 Q. If an examiner testified that
12 they would get a downgrade because they
13 put that number in, they would be
14 incorrect?

15 A. They would be incorrect.

16 Q. So they are not required to
17 determine a value within that range?

18 A. No.

19 Q. Again, as to this number,
20 what's to stop an examiner from randomly
21 picking a number within that range or any
22 number?

23 A. Nothing. We train and we
24 coach, for that question it would just be
25 unheard of in claims handling.

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2 Q. But there is nothing to stop
3 them is your answer?

4 A. Uh-huh.

5 Q. And, again, there is no place
6 where she has to document here on this
7 Evaluation Injury Damages section the
8 reason for choosing the number that she
9 did?

10 A. No.

11 Q. I believe I read somewhere, it
12 was probably in interrogatory answer No.
13 6, and I'm sorry, I don't have copies of
14 it with me, but if you go below -- let me
15 rephrase that.

16 When you are starting a
17 negotiation and you have a value that has
18 been given in Claims IQ on a low end and
19 then you have an approved value on the
20 high end, if you start negotiations below
21 that range, that could be considered
22 evidence of bad faith?

23 A. If the examiner keyed a range
24 in -- can I move us forward?

25 Q. Yes.

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2 A. So on page 59 -- well, you can
3 look at 58 and 59. So if you will look,
4 you will see the person, she had keyed
5 that at 100 percent value. My first offer
6 to this claimant or his or her attorney
7 would have been \$7,500. But then when you
8 look at page 59, with the liability that's
9 supplied, the lowest fair offer would have
10 been \$3,750.

11 So when you look at the file,
12 you see that the person offered \$2,000,
13 then that's bad faith to say why are you
14 offering lower than you said your lowest
15 number would have been. Because you can
16 change this or fix this whatever way you
17 choose to. They can document on the file
18 as to why they did that.

19 Q. If we go back to general pain
20 and suffering --

21 A. Which page number?

22 Q. I'm sorry, page 57.

23 And there is a
24 computer-generated range of \$8,650 and
25 \$12,000, and she chose \$7,500, she chose a

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2 number outside the range that was given.

3 Why would this not be considered evidence
4 of bad faith?

5 A. Because she is not governed by
6 this. There is no guideline, no one goes
7 by this number.

8 Q. No one goes by that number?

9 A. No, not in New York State, not
10 in Region 2. When we look at it, I don't
11 even see that number. No one looks, no
12 one is held to that number. Because the
13 system just houses -- it gives you out
14 this information, but you are using your
15 claims judgment of what you know a value
16 is and that's what you are entering in
17 there.

18 Q. If Candace wanted the number to
19 be lower to begin with, couldn't she just
20 have changed the breaches?

21 A. Yeah, she could do that.

22 Q. Why would she enter the
23 breaches one way and then choose a lower
24 number?

25 A. She would have to explain that.

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2 Q. Again, if Candace said she
3 would be downgraded for choosing a number
4 outside the range, she would be incorrect?

5 A. The same I said on page 59,
6 with no explanation on the file as to why
7 that was done, it would be a downgrade.

8 Q. So there has to be an
9 explanation on file?

10 A. She would need to explain why
11 would you put that your first offer to the
12 attorney would be \$3,750, but you
13 low-balled the person. That is unfair
14 claims practice.

15 Q. You are telling me she doesn't
16 need to document a number lower than the
17 range provided by Claims IQ for an
18 injury -- for a valuation of pain and
19 suffering at page 57?

20 A. On page 57 is her lowest fair
21 number at 100 percent. What ultimately is
22 looked at is page 58, that's what is
23 looked at.

24 Q. Why would page 57 not be looked
25 at if there is also provided a range from

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2 the computer? How would that not be
3 evidence of bad faith?

4 A. Because page 59 is what governs
5 it, because the liability is applied on
6 page 59.

7 Q. And the liability is determined
8 in part by the number that Candace puts in
9 on page 57, correct?

10 A. That she chose, uh-huh.

11 Q. How is that not governing
12 anything going forward? If she picks a
13 number for general pain and suffering and
14 that goes forward when evaluating the
15 number that ultimately comes out on page
16 59, the range, how can you say that that
17 original number she picked of \$7,500 is
18 not important?

19 A. It is not. Because she is not
20 driven -- I don't know which other way to
21 explain it. She is not held to -- no one
22 is held to that number that the system
23 gives. In Region 2 that I know of, no one
24 looks at that. She is held based on her
25 evaluation of the medical specials to say

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2 at 100 percent, this would be my lowest
3 fair offer to the attorney.

4 Q. And let me ask you this: Since
5 you said that Candace has the authority to
6 settle a file up to \$10,000, why would she
7 even be going through this exercise?

8 A. Because it is what we have in
9 place for the examiners to house and to
10 input in so that anyone looking at the
11 file would be able to see it, even just
12 for our auditing purpose, so that we can
13 see, you know, what did the examiner use
14 to fully evaluate or arrive at a value.

15 How I look at it or how it is
16 viewed, it would be like the questions
17 that you are asking me to say how do you
18 know this person didn't just randomly pick
19 a number. Like if that's a case, then
20 anyone could say I got your medical
21 specials, here is \$8,000, here is \$9,000.
22 This is really there to show an in-depth
23 analysis that we looked at everything, we
24 looked at causation, we looked at the
25 impacts on the lives, we looked at all of

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2 these to arrive at our numbers.

3 Q. Again, if you wanted the number
4 to change, she could pick whatever number
5 she wanted? If she wanted that final
6 range to change, she could enter any
7 number she wanted or change the breaches
8 to reflect whatever number she wanted?

9 A. I'm not understanding.

10 Q. If she wanted the ultimate
11 liability adjusted value to come up to a
12 certain amount, are you telling me that
13 she could change the breaches or put in
14 any number she wanted under the pain and
15 suffering value to arrive at that amount?

16 A. I'm not fully understanding the
17 question. Here is the thing --

18 Q. Then let me rephrase it.

19 A. Please, thank you.

20 Q. You are saying that if Candace
21 as the examiner determines the \$7,500
22 amount based on what she believes the
23 claim is valued at, at 100 percent, but
24 then she is ultimately -- strike that.

25 Then we go down to Authority.

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2 It says 3-25 --

3 A. Which page number?

4 Q. I'm sorry, back on page 59.

5 The amount is \$5,200. Did you authorize
6 settlement up to \$5,200?

7 A. Yes.

8 Q. Do you recollect why you gave
9 more than the value range of \$3,750 to
10 \$5,000?

11 A. Based on our conference of the
12 file.

13 Q. Do you have a specific
14 recollection of that?

15 A. No.

16 Q. Is it possible that after
17 review of the file you determined the
18 negotiation range to be insufficient?

19 A. No, I can't recall why I came
20 up with \$5,200.

21 Q. And you believe that it could
22 have been because Candace wanted more on
23 the file?

24 A. I didn't say that. I don't
25 recall.

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2 Q. What would be the reasons that
3 you would approve more than the liability
4 adjusted value to settle a claim?

5 A. Because I'm not driven by the
6 liability adjusted value.

7 Q. What are you driven by?

8 A. I'm driven by my claims
9 experience, my conferencing with the
10 examiner, the information that's made
11 available to me, the liability.

12 Q. So after review you determined
13 the liability was insufficient and you
14 gave a higher authority than what is --

15 A. It is a possibility.

16 Q. Now, if Candace was the one who
17 came in and said that she wanted more than
18 \$5,000 to settle the case, is that a
19 possibility of what could have occurred?

20 A. Yes.

21 Q. And if that was the case,
22 couldn't Candace have just adjusted the
23 breaches to get more money in the
24 liability adjusted value range?

25 A. She can do that, yes.

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2 Q. In this instance where the
3 amount approved was \$5,200 and it is over
4 the liability adjusted value range, it is
5 unlikely that Candace requested the
6 additional amounts because she could have
7 simply adjusted Claims IQ to get a higher
8 amount?

9 A. I wouldn't say that. I
10 wouldn't say that. It is not necessarily
11 so. We could be conferencing together and
12 the examiner can say "You know what, now
13 that I think of it, I think this file is
14 worth X or whatever."

15 Q. "Now that we have had a
16 conversation and I have run it by you and
17 you have given me your advice and you have
18 given me your opinions, I think it is
19 worth more"?

20 A. Not so much my advice, because
21 sometimes folks come over to you and they
22 are talking to you about something and
23 they end up answering their own question.

24 So it could be not that I
25 directed her to change her decision, she

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2 may have just been talking it through with
3 me and decided to say "You know what,
4 Marlene, this is what I want."

5 In terms of Candace and I, this
6 was one of her really good strengths in
7 negotiating files. So oftentimes if
8 Candace came to me, she is making a
9 recommendation to say "You know what, I
10 think this file is worth X, this is what I
11 want," and often that's what I would go by
12 because I trust her judgment.

13 Q. But it could have also been
14 that you determined that liability was
15 insufficient and you wanted to give more
16 money on the file, you thought it wouldn't
17 settle for the range --

18 A. I would have to look, to be
19 honest with you. I don't know. I would
20 have to look at the entire file all over
21 and recall back everything. But I don't
22 know.

23 Q. In this case, again, you said
24 that Candace had the authority, or all of
25 the adjusters had the authority to settle

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2 a case up to \$10,000 on an individual
3 bodily injury claim and \$12,500 on a total
4 claim without authority?

5 A. Yes.

6 Q. Why then would Candace have to
7 come to you to obtain your authority to
8 settle the case up to \$5,200?

9 A. Because, again, she chose to
10 come to me. When I took over this
11 section, this is how they would come in
12 and conference in. I went along with it
13 because I didn't know these examiners. I
14 had to get up and running in knowing them,
15 knowing their strengths.

16 If someone is faltering in a
17 negotiation, I find out that Candace is
18 strong, I say "Candace, you are strong in
19 negotiation, do you mind taking this file
20 and negotiating it for this person."

21 So part of this is getting to
22 know my examiners and their strengths and
23 weaknesses.

24 Q. And when did you come on as a
25 TA2?

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2 A. 4-28-08. And she was out for a
3 couple of months in that year.

4 Q. This was in '09, so this was
5 close to a year, minus a few months, that
6 you had been working with her on a regular
7 basis?

8 A. Yes.

9 Q. So you probably knew her pretty
10 well by then?

11 A. Yeah, I would say so.

12 Q. You also said that
13 negotiations -- TA2s are responsible for
14 negotiating a claim once a settlement
15 authority has been established, right?

16 A. Yes.

17 Q. Before a TA2 can begin
18 negotiations on a claim, are you required
19 to review the action plan with them?

20 A. No. What action plan?

21 Q. The negotiation action plan
22 that's contained in an alog.

23 If you go to page 2, actually
24 page 3, the negotiation strategy snapshot
25 down at the bottom of 2-21-09, are you

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2 required to review that before a TA2 can
3 move forward with negotiations?

4 A. What is here is actually the
5 short-form summary. So when they come in
6 to conference, this is their summary of
7 the meds versus us sitting there and going
8 through the meds one page at a time.

9 Q. So you review their negotiation
10 plan?

11 A. Uh-huh.

12 Q. And if you don't agree with a
13 plan or way that they plan to negotiate
14 the file, can they move forward as they
15 had planned?

16 A. We talk it through to have some
17 type of an agreement. If they convince me
18 of their point, that is perfectly fine.
19 But normally we are at an agreement, and
20 oftentimes with this particular examiner,
21 she was on point with whatever it is that
22 she recommended.

23 Q. And how do you know that?

24 A. Based on the time that I've
25 been with her, that I have conferenced

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2 files with her, based on the settlements
3 that she has made.

4 I remember when I wrote up her
5 PA, there were two files that I had her,
6 you know, negotiate, and she successfully
7 did that, that belonged to someone else.

8 Q. So you did go over the
9 negotiation plan and you had to come to
10 agreement before they could move forward
11 with the settlement negotiations?

12 A. We made sure we were both
13 comfortable and on board. Because
14 basically it is us versus the plaintiff's
15 attorney. So we would, you know, speak,
16 "Okay, Marlene, this is what the attorney
17 is saying to me. What do you think as a
18 counter?" It is role-playing, so on and so
19 forth.

20 Q. Do you ever discuss the
21 strategy with the TA2s?

22 A. Yes, especially when they are
23 going through the orientation phase.

24 Q. Do you do it afterwards as well
25 as a part of your coaching duties?

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2 A. As a part of the coaching,
3 depending on how successful they are being
4 at the job.

5 Q. So you might do it more often
6 when they are a newer examiner, but you
7 continue coaching them all along?

8 A. Right.

9 Q. That's part of your job?

10 A. Right, that's part of my job.

11 Q. Do you ever advise on what
12 number to begin negotiations with?

13 A. We come to an agreement on it.

14 Q. Can you estimate how often you
15 do that?

16 A. I wouldn't say that often.
17 Because given the group that I have and
18 how long I have been with them, maybe in
19 the entry part of when I just started the
20 job function in getting to know them.

21 Q. So when you are having a
22 conversation about a negotiation strategy,
23 is it normal for you to say "Hey, I think
24 you should start with this number" and
25 then possibly go up in increments of this

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2 number, is that something you might
3 discuss?

4 A. That is something we would
5 discuss. The examiners are asking that.
6 I have examiners saying "You know what, I
7 think this is worth my 10, but I don't
8 want to turn the attorney off by offering
9 too low a number. What do you think?"
10 Sometimes I will say "That sounds like a
11 fair number." Stuff like that.

12 Q. So you give your advice?

13 A. Yes. But it is up to them what
14 they are going to do with it.

15 Q. If you don't agree with how
16 they plan to negotiate or what number they
17 start with, do you advise them to start
18 with a different number?

19 A. We come to an agreement on it.
20 We have a discussion. Because the thing
21 is you don't want to generate bad-faith
22 letters and responses. That gets very
23 involved. You have your insured that you
24 are looking to protect their exposure and
25 so forth and you are building a

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2 relationship with these attorneys because
3 you are going to have future claims with
4 them.

5 Q. So it is important that you
6 come to an agreement with the examiner on
7 where to start for those reasons that you
8 have just mentioned?

9 A. If they choose to come in and
10 conference that with me. You know, they
11 may say "I want to start with X." Most of
12 the time I'm saying "Yes, I agree with
13 that" or "You know what, you may want to
14 start a little higher." But I'm not like
15 throwing out a specific number.

16 Q. Or you are advising them to
17 perhaps start higher?

18 A. Maybe a little higher.

19 Q. Do you ever advise them on what
20 increments to go up during negotiation?

21 A. I have coached my examiners to
22 say it is better to start out stronger,
23 and then if you choose go in smaller
24 increments, versus starting out real low
25 and then you are going up in double

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2 digits. That doesn't look good to the
3 attorney. It comes across like you are
4 playing games with them, and they have had
5 success with that.

6 Q. When you talked about examiners
7 having authority to settle up to \$10,000
8 without authority, can they start at any
9 number?

10 A. Yes, they could.

11 Q. When you were talking about
12 there being potential evidence of bad
13 faith, would it be important for them to
14 come to you in those situations to discuss
15 a negotiation plan?

16 A. No. You are saying for every
17 file?

18 Q. Not every file. In the
19 circumstances where they decide that they
20 are going to settle a case on their own
21 without your authority of a certain
22 amount, they can settle it up to \$10,000,
23 correct, for an individual claim?

24 A. Yes.

25 Q. In those instances, do you ever

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2 speak to them beforehand because they have
3 a wide range to work with?

4 A. No. Because they are so
5 experienced by that time, that once they
6 are off the orientation, and because I
7 know, I personally coach to say it is
8 better to start out with a stronger number
9 than to nickel and dime an attorney, it
10 just doesn't look good.

11 Q. In those cases, are they using
12 the adjusted value range calculated in
13 Claims IQ as a guide?

14 A. They are using their own input
15 as the guide.

16 Q. The adjusted value that comes
17 out in Claims IQ --

18 A. They are not using that. Is
19 that the one on 59 that you kept asking
20 about? They are not using that as a
21 guide.

22 Q. No, not that.

23 A. Page 58?

24 Q. Page 59, the liability adjusted
25 value.

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2 A. They are using that lower
3 value, but that's based on their
4 liability. That is based on what they put
5 in as the lowest and the highest fair
6 value.

7 Q. So are you saying that in cases
8 where Candace decides to settle a claim up
9 to her \$10,000 authority on her own
10 without coming to you, would she need to
11 use this liability adjusted value as a
12 guide and start no lower than \$3,750?

13 A. It is not a guide. It is based
14 on her number. She pretty much knows what
15 it is going to come out to if she does the
16 math and says her liability is 50 percent
17 and I'm starting at \$7,500.

18 You see this where it says the
19 \$3,750, she can offer the attorney \$4,000,
20 \$5,000.

21 Q. My question is, can she offer
22 lower in this instance?

23 A. She can offer it, but it would
24 be in bad faith. It wouldn't look good.

25 Q. In those cases she needs to use

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2 Claims IQ, the negotiation range value
3 that comes out, as a starting guide?

4 A. She should use this as her
5 guide that she input, that she came up
6 with this. So the question would be you
7 did all of this, why were you offering
8 this attorney lower than what you
9 personally put in.

10 Q. I was just asking if she can
11 start any lower than the \$3,750 in those
12 cases.

13 A. It would be in bad faith to do
14 that.

15 Q. You are saying in this
16 instance, had you not -- actually, even in
17 this instance you approved the file up to
18 \$5,200?

19 A. Yes.

20 Q. You said Candace has settlement
21 authority up to \$10,000?

22 A. Yes.

23 Q. Would she have been able to on
24 her own settle the case for more than the
25 \$5,200?

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2 A. She can do it. But she would
3 be coming back, because I'm on the file --
4 if she had done it on her own, there is no
5 need. Because I'm on it, she would be
6 saying "Marlene, I know I came in, I was
7 probably asking for maybe the \$5,200, and
8 you had given me this, the attorney is at
9 X, what do you think?"

10 So because I'm on the file, she
11 would come back to me. If she had done it
12 on her own, there would be no need for
13 that.

14 Q. If you are on the file, she
15 doesn't have authority to settle up to
16 \$10,000 without approval?

17 A. Right, if I'm on the file.

18 Q. When you say "on the file,"
19 does that mean you had to conference the
20 file and give settlement authority?

21 A. If she had conferenced it and
22 asked me, yes. That's what I mean by
23 being on the file.

24 Q. If Candace and any of the other
25 examiners testified that they had to come

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2 to you for authority to settle every
3 claim, would they be incorrect?

4 A. No. If they would be incorrect
5 saying they had to come -- repeat the
6 question for me.

7 Q. If Candace and/or any of the
8 other examiners testified that they did
9 not have settlement authority up to
10 \$10,000 without approval, would they be
11 incorrect?

12 A. They would be incorrect.

13 Q. If they said they had to come
14 to you for approval of a settlement amount
15 in every case, would they be incorrect?

16 A. That would be incorrect.

17 Q. Back to negotiations. You said
18 you did do role-playing with your
19 examiners?

20 A. Yes, during the orientation.

21 Q. Just during orientation, or
22 would you do it when you conference a
23 file?

24 A. If we conference a file, it is
25 not so much role-playing, it is just

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2 arguing what are the pros and cons of
3 this, how are you going to approach this
4 with the attorney.

5 Q. Did you ever go over specific
6 arguments?

7 A. Yes, we would coach through it.
8 And it depends on the strength of the
9 examiner. If it was someone like her, I'm
10 not role-playing with her because she is a
11 strong negotiator. I had people that were
12 weaker, even though they had tenure, and
13 we would go through it where I would say
14 "What's your pros and cons?"

15 Q. That's part of your coaching
16 responsibility for your examiners?

17 A. Yes.

18 Q. And how are TA2s trained to
19 negotiate?

20 A. They receive training.

21 Q. What kind of training do they
22 receive?

23 A. They have in-classroom
24 training, when they are out on the floor
25 and going through the orientation phase.

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2 When they meet with the supervisors, they
3 do the write-up of the meds and come in
4 with the supervisor and we argue the pros
5 and cons, and you go through as a
6 supervisor and explain, you know, this is
7 why this is a good argument when the
8 attorney comes back with this, so on and
9 so forth. That's part of the training.

10 Q. Are there written policies or
11 guidelines?

12 A. No, not that I know of.

13 Q. Are TA2s monitored during
14 negotiations?

15 A. Right now, this year, we are
16 doing that.

17 Q. Right now?

18 A. Uh-huh.

19 Q. Is there a new policy in
20 effect?

21 A. In terms of --

22 Q. That requires you to monitor
23 them?

24 A. It is part of one of my duties
25 now that I have to do.

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2 Q. What are you required to do
3 when you monitor them?

4 A. I'm basically monitoring to
5 make sure that there is professionalism
6 there, to make sure that they are not
7 bidding against themselves.

8 Q. How are you doing it?

9 A. By just listening.

10 Q. By listening, standing next to
11 them?

12 A. No, at my desk.

13 Q. So you can listen in on the
14 phone?

15 A. Yes. They e-mail me and say
16 "Marlene, I'm going to call this attorney
17 up," and I would listen in. I would patch
18 into the line.

19 Q. What is the new policy
20 requiring, a certain amount of times per
21 week?

22 A. Two per examiner.

23 Q. For the week?

24 A. For the month.

25 Q. And you have six examiners, so

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2 you have to do twelve per month?

3 A. Yes.

4 Q. You say this is a new policy.

5 Had you never listened in on phone

6 conversations before?

7 A. I have listened in when they
8 have shot me e-mails and stuff like that
9 saying "Oh my God, listen to this." If it
10 was a call they tried before and they knew
11 it would be difficult, they would.

12 Q. When you are listening in,
13 would you ever provide them advice via
14 e-mail?

15 A. Yes.

16 Q. What kinds of advice would you
17 give them?

18 A. I remember one examiner saying
19 "Is this true?" I think the attorney was
20 citing some legal jargon and they wanted
21 to know if that was accurate or not. I
22 think it was a joint and several issue.

23 Or if they are citing that "You
24 know what, I'm going to send you a bad
25 faith," I would send back to say a good

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2 argument would be to say disagreement on
3 value is not bad faith. Stuff like that.

4 Q. Do you ever instruct to say,
5 for example, go up \$500?

6 A. No.

7 Q. You have never instructed while
8 you are listening on the phone an
9 incremental amount to go up?

10 A. No.

11 Q. Did you ever instruct, for
12 example, to hold firm on the offer that
13 they just gave?

14 A. No.

15 Q. Do you ever sit with the TAs
16 while they are on the call and listen in?

17 A. I personally haven't, no.

18 Q. Do you ever stand next to them
19 or over them and listen in on a call?

20 A. No.

21 Q. If Candace or some of the other
22 supervisors said you do this, they would
23 be incorrect?

24 A. They would be incorrect.

25 Q. Do you ever meet with the TA2s

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2 after negotiations to discuss or critique
3 a settled negotiation?

4 A. No. We have a good working
5 relationship. They would come over and
6 say "Did you hear that? Could you believe
7 that?"

8 Q. So you do talk about it?

9 A. Yeah, we talk about it with
10 them coming over.

11 Q. If they weren't able to reach a
12 settlement, you might discuss how they can
13 get a settlement going forward and what
14 strategy to take and what didn't work,
15 what might work going forward?

16 A. Yes, you can do that, yes.

17 Q. You can do that or you do do
18 that?

19 A. Say I monitored and I saw that
20 the attorney was hammering at something we
21 hadn't taken into consideration, that's
22 something we would say "Let's come in and
23 meet again to review that. Is that truly
24 in the meds or not?"

25 I have monitored negotiations

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2 and heard an attorney mention positive
3 IMEs, but meanwhile my examiner wrote
4 there was never anything positive. That
5 is something we need to look at. I found
6 when we look at it, that it was positive.
7 So it is stuff like that.

8 Q. So you do monitor the
9 negotiations?

10 A. The two per month now.

11 Q. And prior to that you didn't do
12 that?

13 A. I would monitor some calls, but
14 not so much, say, the negotiation. It was
15 for customer service, are the calls being
16 returned on time, stuff like that.

17 Q. What is second voicing?

18 A. Someone else, like what I said
19 Candace did with a file, like if you are
20 negotiating a file, you are at an impasse
21 with the attorney or the attorney is not
22 returning your phone calls or whatever,
23 then I may give it to this examiner and
24 say "Why don't you ask this person." They
25 may say "I asked X to do it for me and

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2 they were able to get the settlement."

3 Q. So someone else might handle
4 the settlement for them or they would sit
5 with them and listen in on what was going
6 on?

7 A. They don't sit with them. They
8 just give them the file.

9 Q. They take over the file?

10 A. They take over the negotiation
11 part of it. The file and credits for the
12 settlements remains with the original
13 examiner.

14 Q. When someone is asked to second
15 voice, do you go over the file with them
16 and what is the problem?

17 A. The examiner that owns the file
18 goes over that with them.

19 Q. Are you involved in that
20 conversation at all?

21 A. I may or may not be.

22 MS. MCGOLDRICK: Can we take a
23 break.

24 (Recess taken.)

25 BY MS. MCGOLDRICK:

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2 Q. I think you said that TA2s have
3 annual performance reviews?

4 A. Yes.

5 Q. And they are reviewed by you?

6 A. Yes, it is reviewed by me.

7 Q. Do they have performance
8 reviews by anybody else?

9 A. No, my manager just signs off
10 on it and I give a copy to them.

11 (Harris-Grant Exhibit 9 marked
12 for identification.)

13 Q. Are you familiar with this
14 document?

15 A. Yes. In terms of a performance
16 review, I go over it with them, but then I
17 have to meet with all the managers and
18 then I present each of them to the -- it
19 is three managers that we have. But I
20 have one direct report, it is Rob.

21 So when we are doing the
22 annual, I go in with my whole group's PA
23 and I present each and go over it with
24 them.

25 Q. To Rob and the other -- I'm

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2 sorry, two managers?

3 A. Yes.

4 Q. Who are they?

5 A. This here one, the '09, it was
6 Rob, Charlie Capo and Jeanne Butler.

7 Q. And why are you meeting with
8 them, just to go over it?

9 A. It is annual performance review
10 for merit increases. So they are the
11 managers. So they go over the entire
12 floor. It is with every supervisor they
13 would meet.

14 Q. Once you conference with them,
15 then whatever her increase may or may not
16 be is determined by them and not you?

17 A. Correct. I make the
18 recommendation.

19 Q. Would it be anybody in
20 particular here who makes the
21 determination?

22 A. It is everyone together.

23 Q. All four of you?

24 A. Yes. And they run it by me
25 like I'm there and they are like "Okay,

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2 this is what you proposed, yes, I'm in
3 agreement" or "You know what, no, why is
4 this?" And then I will explain.

5 If they disagree, I will make
6 the counterarguments or whatever. They
7 will get my input and they will say "Are
8 you comfortable with that?" And I say
9 "Yes, I am."

10 Q. Do you actually make a
11 recommendation as to percentage of
12 increase, salary increase?

13 A. Yes.

14 Q. What do you base that on?

15 A. Based on their performance
16 reviews, the additional stuff that is
17 listed at the bottom, like are they a team
18 player, have they done anything where they
19 contribute to the unit, to the department,
20 do they do anything extra, are they
21 pursuing their -- it is more than just the
22 statistics.

23 Q. But is there a particular guide
24 that you go by that allows you to pick a
25 number? For example, do you go in and say

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2 for all of these reasons, Candace should
3 be given a 5 percent increase? Do you
4 recommend a percentage of increase?

5 A. I recommend a percentage of
6 increase based on the guide that I'm given
7 to say this is an X amount of increase we
8 are given per unit.

9 Q. So you are given a guide?

10 A. Yes.

11 Q. You have to go within a guide?

12 A. Within what's being allowed for
13 that particular year, and then I
14 distribute it amongst my examiners.

15 Q. Within your unit you will get a
16 particular amount and you have to
17 determine who gets what?

18 A. Yes.

19 Q. So this document marked Exhibit
20 9 is GEICO 0178 through GEICO 0181, and it
21 is the GEICO Performance Guide and
22 Appraisal, correct?

23 A. Yes.

24 Q. It looks like it is for the
25 ratings period 1-2008 through 12-31-2008?

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2 A. Yes.

3 Q. This is for Candace Harper?

4 A. Yes.

5 Q. And the supervisor/rater is
6 you?

7 A. Yes.

8 Q. The next section has
9 Instructions, I, II and III. The first
10 one says "Goal Setting: At the beginning
11 of the performance rating period, meet
12 with the associate to define and record
13 goals."

14 Is that Exhibit 2, the TA2
15 Examiner Goals?

16 A. Yes.

17 Q. And you were not Candace's
18 supervisor in May of '07, were you?

19 A. No.

20 Q. But those were the goals she
21 was supposed to meet in May of '07 based
22 on the TA2 Examiner Goals, Exhibit 2?

23 A. It says '08 on here. Remember
24 I was saying I was confused with why she
25 has that date.

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2 Q. And you started in April of
3 '08?

4 A. April of '08.

5 Q. So at the beginning of the
6 performance period -- so Candace should
7 have received the TA2 goals prior to
8 January of '08, she should have had a
9 meeting with her supervisor prior to --

10 A. Not prior. It is within the
11 year of '08 that she would have gotten
12 this.

13 Q. Exhibit 9, the first line,
14 Section 1, Goal Setting, "at the beginning
15 of the performance rating period," so you
16 mean in January of '08 you would had to
17 have met with her?

18 A. Right, to administer the goals.
19 That's why that date, '07 --

20 Q. Would there have been a
21 different TA2 2008 goals, perhaps?

22 A. Not that I know.

23 Q. Something subsequent?

24 A. No. And for it to happen in
25 '07, this is odd. Like no one sets their

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2 goal, to give it out for the next year
3 coming up, in the middle of the previous
4 year.

5 Q. So the date may have been
6 wrong?

7 A. Yeah.

8 Q. But you also thought that
9 May -- if she met with you in May of '08,
10 that might have been too far ahead?

11 A. Right. Like if she was given
12 this in May of '08, yes.

13 Q. But you started in April '08.
14 Perhaps did you meet with your examiners
15 when you became the supervisor?

16 A. It would have been the prior
17 supervisor that would have administered
18 it.

19 Q. In any event, the TA2 examiner
20 goals sheet, Exhibit 2, is essentially
21 what she was -- what she believed were her
22 goals for 2008, what she had to meet?

23 A. Right.

24 Q. When we look at Exhibit 2,
25 these were the department goals, correct?

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2 A. Yes.

3 Q. So these aren't for your
4 particular section, these are for the
5 department?

6 A. Per examiner, this is the goal
7 that the department arrived at this goal
8 for each examiner.

9 Q. For each examiner, but for your
10 entire department this applies to?

11 A. Yes.

12 Q. And then the one given the most
13 weight is "net closures minus reopens"?

14 A. Right.

15 Q. Why was this given the most
16 weight?

17 A. I'm not sure. But I know that
18 this is one of the core goals, file
19 quality and net closures, like completed
20 or net closure is often heavily weighted,
21 bringing a file to resolution.

22 Q. We are looking at Exhibit 2.
23 The first one says "net closures." It
24 doesn't say "file quality," does it?

25 A. No. It says "net closure."

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2 Q. So do you have any
3 understanding of why the net closures
4 itself is so highly rated?

5 A. Because it ties in with file
6 resolution.

7 Q. Does it have anything to do
8 with reserves being open on certain files
9 and so the more files you close, the
10 better the bottom line is for GEICO?

11 A. No. I don't understand that
12 question.

13 Q. If you have 100 files that are
14 open and each have reserves pending on
15 them, if you are closing a file, then
16 those reserves can be used somewhere else,
17 it affects the bottom line of the company,
18 right?

19 A. Right. But it depends on what
20 you are paying out and then you are
21 frequently bumping up reserves. You might
22 have a reserve where you are using
23 everything. So that's a net zero. Or you
24 may have a file where you denied
25 liability, and yes, that will free up

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2 money for the company for investing.

3 Q. So it is important to close
4 files?

5 A. It is important to bring the
6 files to resolution.

7 Q. To close them?

8 A. Right, to close the file.

9 Q. That's why the net closure
10 weight is rated so high, right?

11 A. There is a lot that goes into
12 the goal setting. I wouldn't say that the
13 bottom line in terms of profitability is
14 the sole reason.

15 Q. That's not what I asked.

16 A. I thought that's what you
17 asked.

18 Q. I said would one of the reasons
19 that you wanted to close --

20 A. I didn't hear the "one," I'm
21 sorry.

22 Q. It is just important for you to
23 close files?

24 A. Yes, it would be one -- I'm
25 sorry, when I heard it, I heard that's the

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2 reason why the goal is set.

3 Q. Then we have "total completed
4 features." Does that mean features
5 closed?

6 A. This is features that gets
7 transferred to the Continuing Unit.

8 Q. But within that claim
9 adjuster's claims files, those features
10 had been closed?

11 A. It is not closed. It is
12 transferred up to the Continuing Unit.

13 Q. But she is not going to be
14 working on the file anymore?

15 A. Right. But she got credit for
16 the work that she did on the file for the
17 period that she had it for.

18 Q. And her completed features
19 allowed it to get moved up to the next
20 level?

21 A. The fact she moved it up to the
22 next level, that falls into the completed
23 feature. And it had to be an open
24 feature.

25 Q. That is 15 percent, right?

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2 A. Yes.

3 Q. Then we have all of the audits?

4 A. Uh-huh.

5 Q. And they amount to

6 approximately 55 percent, I think. Then

7 what is ARX?

8 A. That's our auto express repair

9 shop, auto repair express.

10 Q. Are claims examiners supposed

11 to refer over to the body shops for the

12 auto repair, GEICO-approved?

13 A. Yes.

14 Q. If they refer over a certain

15 number, the weight will be 5 percent, they

16 met their goal?

17 A. Yes.

18 Q. It says Other Considerations,

19 and it says "technical knowledge,

20 evaluation and negotiation skills, case

21 preparation, presentation skills," there

22 is a number of other things listed under

23 there, correct?

24 A. Yes.

25 Q. So those are taken into

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2 consideration as well?

3 A. Yes.

4 Q. But there is no weight given to
5 that?

6 A. Correct.

7 Q. Then it says "No matter how
8 good you are, it doesn't count if you are
9 not here. It puts an unfair burden on
10 coworkers. Both dependability and
11 schedule adherence will be used in the
12 evaluation of the performance and the
13 determination of salary increase."

14 What is meant by
15 "dependability"?

16 A. You being at work.

17 Q. And "schedule adherence"?

18 A. You being at work on time.

19 Q. So that's on time, and
20 dependability is being there?

21 A. Uh-huh.

22 Q. Would you agree that there is a
23 direct correlation between hours worked
24 and the goals met?

25 A. No. I'm not sure if I

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2 understand that.

3 Q. If a claims examiner works more
4 hours, will she possibly close more files?

5 A. Not necessarily.

6 Q. What is the average work week
7 for your claims examiners?

8 A. It is 38.75. I'm thinking of
9 the 7.75, 38.75 for the week.

10 Q. The 7.75, do claims examiners
11 often work later than that?

12 A. Not often.

13 Q. Do they work on the weekends?

14 A. Some may choose to. It is by
15 choice and how they structure their day.

16 Q. I'm sorry, you are going to
17 have to explain that.

18 A. It is not a choice -- it is not
19 mandatory to say that you have to work on
20 the weekend. The workweek is on Monday
21 through Friday on the hours that you have
22 arranged. For Candace, I believe her
23 hours were 7:30 to 4. It is how
24 productive you are throughout your day.

25 I remember some of my coaching

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2 with examiners are you have to watch your
3 non-value-added time. Some people will
4 spend the day having a lot of conversation
5 that is not work-related, and then they
6 find they are having to make that up at
7 the end of the day.

8 So you coach to that as a
9 supervisor to point out that "Listen, you
10 have to know when to make certain people
11 who are talkers, and that's distracting
12 you from your work, move on, so you can
13 focus on what you have to do."

14 Q. Are you saying that Candace was
15 a talker and she worked a lot on the
16 weekends because she wasn't using her time
17 wisely?

18 A. Some of it, because I had to
19 have a conversation saying I need to move
20 her seat from her buddy that was next to
21 her. I had that conversation with her
22 once.

23 Q. Was that documented anywhere?

24 A. No, I didn't document it.

25 Q. Why would you not document a

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2 conversation where you are talking about
3 her performance in her file?

4 A. Because it wasn't something
5 that rose to that level at that point. I
6 just started in the section, that is
7 something I was observing and noticing
8 that she was doing and doing more so than
9 anyone else within the section.

10 So she and I had a face to face
11 and she admitted to it. She said "You
12 know what, Marlene, I'm correct, in that
13 I'm going to learn to tell Karen let's
14 talk after work." They were really close
15 buddies. A lot of conversation was
16 non-work-related and she admitted to that.

17 I don't have to document every
18 single thing like a coaching session like
19 that. That was just an observation and a
20 quick hit, like just make the turnaround
21 and correct that.

22 Q. Did she turn it around and
23 correct it?

24 A. For the most part, I would say.

25 Q. If we are looking through alog,

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2 for example, on Exhibit 3, do you have it
3 in front of you?

4 A. Yes.

5 Q. Was the normal day for Candace
6 you said about 7:30 to 4?

7 A. Yes.

8 Q. What about your other
9 examiners?

10 A. 8 to 4:30.

11 Q. So when we see on here times
12 past 4:30 or weekend, those are people
13 that needed to make up their time because
14 they weren't using it wisely?

15 A. Not make up their time. They
16 chose to work beyond. Sometimes I know
17 for her when I'm going by and I'm there in
18 the evening, I would be shocked to see
19 that she is there, and she would say to me
20 "Well, my son is having basketball
21 practice, it doesn't make sense for me to
22 go home, so I'm just staying here and
23 doing some work while I'm here."

24 Q. Can you look on page 39. So,
25 for example, that's a day that Candace

1 HARRIS-GRANT

2 Harper -- it is a Sunday and it looks like
3 she was in from 10 a.m.?

4 A. Yes.

5 Q. I'm not going to be able to go
6 through all of these individually, but it
7 wasn't a regular occurrence for Candace or
8 any of your other examiners to work on the
9 weekends?

10 A. Not my regular examiners.
11 Candace would come in to work her TRRs,
12 the C71 reviews or six months or whatever.
13 That is something that I have spoken with
14 her about to say "What's the sense in you
15 doing it on a weekend when you should be
16 on those claims making calls to the
17 attorney's office, the adverse carrier's
18 office, you are simply leaving voice mail
19 messages here."

20 Q. If they didn't get their net
21 closures done and the audits didn't result
22 in high satisfactory numbers, they
23 wouldn't meet their performance goals,
24 correct?

25 A. The audit doesn't have anything

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2 to do with your SPR, how your file comes
3 out. And you can find an examiner putting
4 in time, it is what they are doing with
5 that time, and still be nonproductive.

6 Q. But they have goals that they
7 have to meet. So if they are coming in on
8 the weekends, it is because they have not
9 met those goals during the week?

10 A. No, not necessarily. They
11 could be catching up on work that they
12 didn't get to.

13 Q. Which would lead to them
14 meeting their goals for 2008 or whatever
15 the year was?

16 A. They would put in the time,
17 from my understanding, of having
18 discussions with my examiner, based on how
19 their week went or what they choose to do.

20 Q. So you are saying these people
21 just chose to work the weekends because
22 they enjoyed it?

23 A. I'm not saying they enjoyed it.
24 That would be putting words in my mouth.
25 They chose to come in and do it on those

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2 days, and she is one that if she admits to
3 it, she can say I have spoken to her about
4 coming in on the weekends to work like her
5 C71s.

6 If you are doing C71s on a
7 weekend, you are calling an attorney to
8 say are you still pursuing this claim, but
9 you are not getting anyone, so you are not
10 getting closure.

11 Q. Did you testify at an
12 unemployment hearing for Ms. Harper?

13 A. Yes, I did.

14 Q. Do you know the results of that
15 hearing?

16 A. Yes.

17 Q. What was the result of that
18 hearing?

19 A. She won the hearing.

20 Q. Do you know why she won the
21 hearing?

22 A. No, to be honest, I didn't read
23 the thing. I just deleted it after the
24 decision came in.

25 (Harris-Grant Exhibit 10 marked

1 HARRIS-GRANT

2 for identification.)

3 Q. This is the Decision and Notice
4 of Decision in Candace Harper's claim
5 against GEICO for unemployment benefits.

6 If we go to page 5 --

7 MR. HEMMENDINGER: Is there a
8 page 4 or a page 7?

9 MS. KOROLEVA: The other side
10 of the page just had standard writing on
11 it. But this is a complete copy.

12 MR. HEMMENDINGER: I don't get
13 it, I'm sorry. It says 3, 5, 7.

14 MS. KOROLEVA: If you read the
15 bottom of this page, it is just that the
16 other side had boilerplate basically, the
17 same thing on all the other pages.

18 MR. HEMMENDINGER: All right.

19 Q. So you had to testify at this
20 hearing, correct?

21 A. Yes.

22 Q. On page 5 at the bottom where
23 it says "Decision," it says "The
24 Commissioner of Labor's timeliness
25 objections are overruled. The claims

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2 application to reopen is granted."

3 And she essentially, then, is
4 allowed benefits with regard to the issue
5 decided herein, correct?

6 A. Yes.

7 Q. If we go up to the paragraph
8 right above "Decision," it talks about the
9 credible evidence.

10 In the third sentence, do you
11 see that, it starts with "I find the
12 supervisor's testimony that she gave no
13 admonition to her subordinates around the
14 end of October to be less credible than
15 the claimant's testimony that she did,
16 based upon the subsequent immediate
17 precipitous drop in the claiman't opening
18 of LOU and REN features."

19 Do you see that?

20 A. Yes.

21 Q. So they determined your
22 testimony to be less credible than
23 Ms. Candace Harper's?

24 A. Yes.

25 Q. So going back to the TA2

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2 examiner goals, and you wouldn't agree
3 that there is a direct correlation between
4 the hours worked and the individual's
5 goals?

6 A. No.

7 Q. If you can look at the
8 Performance Guide, please, Exhibit 9. At
9 the end of the year, the ratings period,
10 you evaluate the associate's performance
11 against each of the goals, right?

12 A. Yes.

13 Q. So when we have net closures,
14 it is a weight of 20 percent, I'm on page
15 179, the goal is 44 to 52, and the result
16 is 46.7, right?

17 A. Yes.

18 Q. Were these closures basically
19 just counting up how many were closed?

20 A. How many features, the net
21 feature.

22 Q. We are talking about net
23 closures.

24 A. The net closure is the closures
25 minus reopens.

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2 Q. So it is how many claim files
3 were closed?

4 A. How many features were closed,
5 not claim file.

6 Q. Then you have Completed
7 Features underneath that. What is the
8 difference?

9 A. You may have features that
10 close, but it doesn't close out the entire
11 claim file.

12 Q. Then what closes out the entire
13 claim file?

14 A. When every feature in the file
15 is paid or denied, when every feature in
16 the file closes.

17 Q. You are saying when Candace
18 gets a net closure, it is when her
19 features have been closed and the features
20 get moved up?

21 A. Net closure is when a feature
22 closes. You said a moment ago, files.
23 But it is features, feature-driven. Even
24 though it says "net closure," it really
25 should say "net features." But it is

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2 always referred to as net closure.

3 But that has to do with closed
4 features minus the reopens. The completed
5 features are features that are open that
6 gets transferred up to the higher level,
7 which is the Continuing Unit.

8 Q. But with regard to those, when
9 you get the result, it is basically
10 counting up how many, correct?

11 A. Right.

12 Q. And then you gave a rating of 3
13 because it fits within the ratings scale
14 on the other side?

15 A. Yes.

16 Q. Now, when you give the rating
17 result there, there is no other
18 consideration taken to the net closure
19 except how many are closed, right?

20 A. Minus the reopens.

21 Q. And these goals, are they
22 different on the chart that you have here
23 compared with the TA2 goals on Exhibit 2?

24 A. Yes. That's what I'm looking
25 at, and I'm --

1 HARRIS-GRANT

2 Q. Or are they condensed? Would
3 all of these audit results go into file
4 quality in some other section?

5 A. It looks like it is different.
6 If you look at the total completed
7 features, it said 15 percent, and this is
8 saying 20 percent.

9 Q. So if Candace was able to
10 settle her files -- settle a file for less
11 than, for example, the authority given by
12 you in a particular case, would that
13 change any of the ratings up here?

14 A. If she achieved a closure
15 through settlement, it would show up under
16 Net Closures.

17 Q. But it is not being evaluated
18 on whether she settled on the low end of
19 the authority given or the high end?

20 A. No, it is a pure number.

21 Q. So her productivity performance
22 is measured in large part on net closures,
23 completed features, referrals to
24 GEICO-approved auto body shops?

25 A. Yes.

1 HARRIS-GRANT

2 Q. And then file quality and
3 audits are important as well?

4 A. The ARX, I don't think that is
5 a productivity. That would be more like a
6 customer service, that's why it is 5
7 percent of the goal, because it doesn't
8 measure productivity. Productivity is
9 measured really in the first two.

10 Q. But she is measured on the
11 number that she refers over?

12 A. Yes.

13 Q. She met that goal?

14 A. Yes.

15 Q. And it is not on the quality of
16 the referrals, it is just the number?

17 A. It is a number that gets
18 referred.

19 Q. The body of this is your
20 evaluation for Candace?

21 A. Yes.

22 Q. It talks about a report card.
23 What is a report card?

24 A. The monthly, you show your
25 examiners monthly how they are doing.

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2 Q. So you meet with your examiners
3 monthly to show them how they are doing in
4 meeting their goals?

5 A. Yes, and you give them a report
6 card.

7 Q. And then it says "Candace has
8 shown improvement in her use of CIQ." Is
9 that Claims IQ?

10 A. Yes.

11 Q. And that relates to training
12 given. So you were continuing training
13 with Candace on Claims IQ?

14 A. Yes.

15 Q. So the training they received
16 wasn't just at the beginning when the
17 program was open?

18 A. Right, new system enhancements
19 and so on and so forth.

20 Q. Then it says "For 2009, Candace
21 will work to consistently apply for
22 coaching and training given." Is that
23 coaching and training from you?

24 A. And the department as well.

25 Q. What kind of other department

1 HARRIS-GRANT

2 training does she have?

3 A. You have like seminars that are
4 given, you know, to show feedback, any
5 trends that we are seeing and things like
6 that.

7 Q. It says "Candace shall continue
8 to utilize Claims IQ in her liability
9 investigation and resolution"?

10 A. Uh-huh.

11 Q. And it is important for her to
12 use Claims IQ in her ongoing investigation
13 and resolution, isn't it?

14 A. She needs to utilize it in the
15 investigation and applying the VTL in her
16 investigation and the applicable
17 comparative negligence.

18 Q. When you mentioned before that
19 she doesn't need to use Claims IQ in order
20 to evaluate her claims, that would be not
21 what you are saying here? Here you are
22 saying she will work to apply the VTL in
23 her liability investigation and
24 application?

25 A. In terms of where the breaches

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2 are concerned, and actually pulling it
3 out. Because you conference with an
4 examiner, you review a file, and there is
5 clear breaches of the vehicle and traffic
6 law that you see folks aren't utilizing
7 that they need to utilize and they are
8 not.

9 Q. And that's when you conference
10 the file, you find those things?

11 A. Yeah, if you conference a file
12 or maybe you do a file audit of the file
13 and you will see that certain things are
14 missing.

15 Q. And it says "She will apply the
16 coaching given to review alog for
17 supervisor instructions"?

18 A. Yes.

19 Q. And supervisor instructions
20 only after there is a file conference, or,
21 again, is this you going in --

22 A. It is almost quarterly, like
23 the three-month, the six-month, and the
24 12-month review, if I'm in the file and I
25 see something and I'm given an

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2 instruction, like that would probably
3 explain in one of the other things that
4 you had entered into evidence before why I
5 would, because she was not the best at
6 following instructions.

7 Q. So if you have examiners that
8 worked for you that weren't the best at
9 following instructions, it was important
10 to follow them closely?

11 A. I would have to follow up to
12 make sure whatever instruction that was
13 given was followed, especially if it was
14 critical to the claim.

15 Q. Here it says "in addition to
16 working her e-mails timely." What is
17 important about working her e-mails
18 timely?

19 A. She would have backed up
20 e-mails. It is unheard of to have like
21 over 100 e-mails. These are the little
22 things that you coach to as a supervisor
23 to say you may not be achieving your
24 completed feature goals or whatever,
25 because if someone is shooting you an

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2 e-mail to say "I received a call from the
3 attorney's office, they are no longer
4 representing the person," and you are
5 behind in your e-mails by a month or a
6 couple of weeks, you are not closing out
7 that feature in a timely manner.

8 If you are behind in like your
9 e-mails, that ties into your file quality
10 and your productivity.

11 Q. Those would be reasons why you
12 would come in on the weekends or stay
13 late, to get these things caught up on?

14 A. Depending on how the person
15 structures their day and what they are
16 doing.

17 Q. And then there is a section on
18 page 180 where Candace can comment. And
19 is that just her commenting on your
20 review?

21 A. Yes.

22 Q. She is basically agreeing, and
23 then states that she "will give 110
24 percent along with the tutelage of my
25 supervisor," and that was you, correct?

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2 A. Yes.

3 Q. Then they have their own
4 self-appraisal?

5 A. Yes.

6 Q. Are they required to do this?

7 A. Yes, it is part of the review.

8 Q. We received a supplemental
9 witness disclosure list in this case. I'm
10 sorry, I don't have an extra copy, but I'm
11 curious if you would be able to tell me
12 who some of these people are.

13 Who is Sharon Batson?

14 A. One of my associates.

15 Q. What do you mean, "associate"?

16 A. That works for me.

17 Q. Is she a claims rep?

18 A. Yes, she is.

19 Q. How long has she worked for
20 you?

21 A. Maybe a little over a year. I
22 think she started July or August of '08.

23 Q. Then Joseph Pace and John
24 Renwick, would they be the same?

25 A. John Renwick worked for me back

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2 in TA1. He is now in Continuing.

3 Q. He is still with GEICO?

4 A. Yes. And Joseph Pace, when I
5 took the section, he was there.

6 Q. He is a TA2?

7 A. Yes.

8 Q. Is he still with GEICO?

9 A. Yes.

10 Q. Are there any TA2s or TA1s that
11 you have supervised besides Candace Harper
12 that are no longer with GEICO?

13 A. No.

14 Q. And Victoria Lynn Fuchs, do you
15 know who that is?

16 A. Yes. She is a trainer.

17 Q. Does she still work at GEICO?

18 A. Yes, she does.

19 Q. And John Jones?

20 A. Yes.

21 Q. He is a trainer?

22 A. He was a trainer. He is now in
23 the Continuing Unit.

24 Q. And he still works at GEICO?

25 A. Yes.

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2 Q. What is a closure contest?

3 A. It is a contest that the
4 managers may decide to have with prizes at
5 a given quarter that they choose to do so.

6 Q. So if a TA2 wins a closure
7 contest, they get a certain prize?

8 A. Yes.

9 Q. You just count up simply how
10 many they close within a certain period
11 and they get the prize?

12 A. Yes.

13 Q. So they have an incentive to
14 close those files?

15 A. Yes.

16 Q. How are the hours of the
17 employees tracked at GEICO?

18 A. I don't know that we track the
19 hours.

20 Q. Do they have a swipe card to
21 get in and out?

22 A. We swipe in and out to enter
23 the building and when we are leaving.

24 Q. So if someone comes in on the
25 weekend, or at any time, actually, their

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2 entry and exit are tracked?

3 A. I'm not sure if it is tracked.

4 I just know that that's our policy to

5 swipe them in and out. I thought it was

6 more as a security procedure, because you

7 would have to have a visitor's pass,

8 security gets involved, so I think it is

9 more of a security.

10 Q. Do you know who might know

11 whether or not hours are tracked?

12 A. I'm not sure. Maybe Human

13 Resources. I'm not sure.

14 Q. I had asked you before whether

15 or not in March of this year new policies

16 were instituted regarding the powers that

17 examiners have, TA2 examiners have, and

18 you said there wasn't anything?

19 A. You said in regards to if their

20 job function changed.

21 Q. Have any new policies been

22 instituted with regard to what TA2s can

23 do, what authority they have in 2010?

24 A. That at the supervisor's

25 discretion, the examiners that had the

1 HARRIS-GRANT

2 authority, they could continue, or you can
3 just look and say everyone in my section
4 has the authority to settle within the 10
5 or the 12.5.

6 Q. Can you break that down a
7 little bit, if they have the authority? I
8 thought you said earlier that all TA2s had
9 the authority to settle without approval
10 up to \$10,000 per injury claim and \$12,500
11 total?

12 A. It is not every examiner that
13 has it. So I might have misunderstood.

14 Within the department, I
15 remember even back for myself as an
16 examiner, I remember conferencing with my
17 supervisor initially. After that, I
18 didn't go back. I utilized my 10K. When
19 I took my section, they came to me and I
20 wanted them to continue to come to me to
21 conference files that they chose to,
22 because I needed to get to know them and
23 know their strengths and their weaknesses.

24 The situation in terms of the
25 authority to pierce or not pierce, it

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2 fluctuates throughout the department. So
3 you do have examiners that had the
4 authority and utilized it fully as they
5 choose to.

6 Q. Is this written down anywhere?

7 A. No, it is not a written thing.

8 Q. Is it per supervisor or is
9 it --

10 A. Each supervisor can choose to
11 do it a certain way within their section.
12 Like you may have a supervisor that has
13 like 50 percent of their section that does
14 it. In my unit, I have 100 percent of my
15 people.

16 Q. 100 percent of your people do
17 what?

18 A. Settle within their authority,
19 pierce is denied and settle within their
20 authority.

21 Q. And how often has this been,
22 since you took over as a TA2?

23 A. Not since I have taken over.

24 Q. Since when?

25 A. Since this year. I think it is

1 HARRIS-GRANT

2 either February or March. I'm not sure.

3 Q. Are there any other changes in
4 policy?

5 A. No.

6 Q. Anything with regard to
7 determining liability percentages, has
8 that changed?

9 A. No.

10 Q. And you said that now -- what
11 kind of authority do your TA2s have now
12 with regard to settlement authority up to
13 \$10,000 or 12.5?

14 A. That's it, that's what they
15 have.

16 Q. They have 100 percent, they can
17 do it without your approval?

18 A. Yes.

19 Q. You said you misspoke, because
20 when you told me before that they had this
21 authority all along, that that was not
22 correct?

23 A. You have examiners that did
24 have -- that have the authority and were
25 doing it. It was section by section.

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2 Q. Within your section, when this
3 new policy took effect that they can now
4 settle up to 100 percent without
5 supervisor approval, prior to that, what
6 was the makeup of your group?

7 A. The makeup of my group, I had
8 examiners that when I did bundle reviews,
9 I would see that they did a settlement
10 within their own authority, and I didn't
11 coach to it or do anything about it.

12 Q. How many of your examiners?

13 A. It was one examiner that I saw
14 do that.

15 Q. That you allowed to settle up
16 to?

17 A. She did it, and I didn't coach
18 or say anything because she did have the
19 authority to.

20 Q. She had the authority?

21 A. Yes.

22 Q. Did anybody else have the
23 authority or was it just this one?

24 A. They all had the underlying
25 authority that they can do that. But

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2 examiners would come in and conference
3 with me. I never had a conversation with
4 my people and said "You don't have the
5 authority, you have to see me on every
6 single file."

7 Q. Let's step back.

8 What was the new policy with
9 regard to settlement authority that was
10 instituted in February or March of this
11 year?

12 A. That it was at the supervisor's
13 discretion, if the person was fully
14 oriented and you were comfortable with
15 them, based on what they have been doing,
16 they can say they no longer need to see
17 you. They don't have to come in.

18 Q. They don't have to seek
19 authority from you?

20 A. Uh-huh.

21 Q. Prior to this you are telling
22 me that within your department, that was
23 the same policy in effect?

24 A. Pretty much, yes, because there
25 were sections that didn't require and I

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2 had people that would pierce on their own
3 and did not come in to me, to see me.

4 If I saw it in a bundle, I
5 didn't call them out on it to say "Why
6 didn't you see me on this?" There is also
7 claims that is resolved where nothing is
8 entered into Claim IQ because they have
9 the authority where they can do walk-way
10 BI settlements, meaning if it is a
11 pedestrian or bicyclist and they choose to
12 give them a dollar amount --

13 Q. What was the purpose of
14 instituting a new policy if that was
15 already the policy in effect?

16 A. I wasn't there on the day of
17 and it was my peers that told me. It was
18 more for a clarification to clear up to
19 the examiners that you do have the
20 authority, you don't have to see your
21 supervisors if you choose not to.

22 Believe it or not, people still
23 come in and see you, even with that
24 clarification.

25 Q. And there was also

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2 clarification needed regarding piercing
3 the threshold as well?

4 A. No.

5 Q. What was the policy change
6 regarding piercing the threshold?

7 A. There was no policy change
8 about piercing the threshold or not
9 piercing.

10 Q. And there was no policy change
11 with regard to determining percentage of
12 liability?

13 A. No. I had one examiner that I
14 removed this authority to accept 100
15 percent because he would just blanketly
16 accept 100 percent. And that was just one
17 of my six.

18 Q. If a TA2 who works in your
19 department said there were clear changes
20 to the policy that took effect March 24,
21 2010 they would be incorrect?

22 A. I think it was more of a
23 clarification.

24 Q. And do you know what prompted
25 this clarification?

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2 A. No, I don't.

3 Q. Would it be this lawsuit?

4 A. I don't know.

5 MS. MCGOLDRICK: I think that's
6 all I have.

7 MR. HEMMENDINGER: Well,
8 unfortunately, it is going to be a little
9 longer because I have a couple of
10 questions.

11 EXAMINATION BY MR. HEMMENDINGER:

12 Q. Earlier today you testified
13 about the Claims Manual. I want to ask
14 you some follow-up questions about that.

15 A. Okay.

16 Q. Is there anywhere, any table or
17 matrix or other information, you can look
18 up in the Claims Manual to see what the
19 percentage of liability should be on a
20 given set of facts?

21 A. Absolutely not, no.

22 Q. Is there anywhere you can look
23 up to see what the amount of damages for
24 pain and suffering would be for any set of
25 facts?

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2 A. No, absolutely not.

3 Q. You testified at one point I
4 believe that there was a determination
5 that was easy to make regarding coverage.
6 I forget what you said was easy to make.

7 But are there coverage
8 questions -- are all coverage questions
9 that have to be looked into by a TA2 easy
10 to decide?

11 A. No, it is not easy. The thing
12 is an investigation is needed in every
13 single coverage issue that arises. So say
14 what I was discussing earlier about
15 nonpermissive use, late notices, you can't
16 just arbitrarily look at the file and say
17 it is not an issue. You have to do an
18 investigation.

19 So it is not an easy resolution
20 where you just look and say oh, there is
21 no issue. You have to investigate it by
22 speaking to all the interested parties.

23 Q. And if the TA2 determines there
24 is no issue concerning coverage, she can
25 record that in the file, correct?

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2 A. Correct.

3 Q. If the TA2 just decides that
4 there is an issue involving coverage, what
5 does the TA2 do after that?

6 A. They make a recommendation.

7 Q. How do they come up with the
8 recommendation?

9 A. Based on their investigation
10 and assessment.

11 Q. Are there some facts that bear
12 on that that could be looked up in GEICO's
13 computer system?

14 A. If it is --

15 Q. For example, when the policy
16 was issued?

17 A. Yeah, the policy effective
18 date, cancellation dates.

19 Q. Are there other pertinent facts
20 that you would not be able to look up in
21 GEICO's system?

22 A. Absolutely.

23 Q. What kind of things?

24 A. Such as when a loss took place,
25 especially when no police report was

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2 filed, permissive use, whether or not we
3 were involved in an accident. To see
4 whether we were at the time and place of
5 occurrence, you need to inspect the file,
6 take a recorded statement, you may have to
7 use SIU. It is involved.

8 Q. I will ask you about the audits
9 for a second. I'm not talking about the
10 quarterly reviews, but the audits that you
11 do of people's files.

12 You review two people on your
13 team per month and one person on somebody
14 else's team?

15 A. Yes.

16 Q. That's not right, is it? Let
17 me make sure I articulate this correctly,
18 or you articulate it correctly.

19 In a month, how many files do
20 you audit?

21 A. I audit three per examiner.

22 Q. On your team?

23 A. Two from my team and one for a
24 cross team.

25 Q. So in a given month, three

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2 files that, say, Ms. Harper had, would
3 have been audited?

4 A. Yes.

5 Q. And that's out of her total
6 number of open files?

7 A. Yes. That's what I'm required
8 to do. If you have a bad month, you may
9 not get to do all three or two.

10 Q. There is a document or an entry
11 that is called negotiation action plan,
12 and this appears in the claim evaluation
13 short form and it also appears in the
14 alog -- that doesn't appear in Claims IQ,
15 does it, the negotiation action plan?

16 A. That's their summary that they
17 made on that section in Claim IQ, and they
18 save it, snapshot it, onto the alog.

19 Q. The negotiation action plan of
20 that is preprinted, correct?

21 A. Yes, it is preprinted.

22 Q. Do the TA2 fill that out with
23 what their actual negotiation tactics are
24 going to be?

25 A. No.

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2 Q. Do they tell you what number
3 they are going to start with?

4 A. No.

5 Q. Do they tell you what numbers
6 are going to go up?

7 A. No.

8 Q. Do they tell you when they are
9 going to increase their offer?

10 A. Absolutely not, no.

11 Q. Is any of that covered in what
12 is labeled as an action plan?

13 A. No. That thing should really
14 be named like a file summary or something,
15 or medical summary.

16 Q. Does it discuss the negotiation
17 tactics at all?

18 A. No.

19 Q. In Candace Harper's case, once
20 you gave her settlement authorization, how
21 often or in what percentage of cases, if
22 you can answer that, would you have a
23 follow-up conversation with her about her
24 negotiation tactics?

25 A. About her negotiation tactics?

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2 Hardly ever.

3 Q. Did she come to you and ask for
4 your advice on when to increase it?

5 A. No.

6 Q. Or how much to increase the
7 offer?

8 A. No.

9 Q. Typically when you dealt with
10 her, when you were discussing settlement
11 authority, did she make a recommendation
12 as to a figure she was looking for?

13 A. Yes.

14 Q. And if she did not settle for
15 within that figure, what happened then?

16 A. She would either come back and
17 see me to conference it or to give me an
18 update on what is going on.

19 Q. And we know that in some cases
20 the authorization was increased, correct?

21 A. Yes.

22 Q. In those cases did she say
23 "Well, what do you think I should do?"

24 A. No, she came in with a number
25 that she wanted and that's what I would

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2 give to her.

3 Q. What percentage of your time do
4 you think you spend on administrative
5 tasks that doesn't involve actually
6 overseeing files?

7 A. I think over 50 percent, well
8 over, on my administrative stuff.

9 Q. Would that include doing
10 evaluations?

11 A. Like conferencing files with
12 examiners?

13 Q. Personnel stuff. Do you have
14 to do payroll?

15 A. Yes, approve.

16 Q. Do you have to handle time-off
17 requests?

18 A. Yes.

19 Q. Do you have to orient new
20 employees?

21 A. Yes.

22 Q. Do you have meetings to go to?

23 A. Yes.

24 Q. Special tasks?

25 A. Yes.

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2 Q. Reports?

3 A. Uh-huh, projects, stuff like
4 that.

5 Q. The scripts that are provided
6 by Claims IQ for interviews, are the TA2s
7 required to adhere to those verbatim?

8 A. No.

9 Q. How closely do they adhere to
10 them?

11 A. They have radio buttons for
12 them to check off if they did, and you
13 rarely ever see it checked off. But you
14 don't even coach to it. They just go off
15 their own mental script from doing this.
16 It is like routine, in a sense, for them.

17 Q. Are there cases where they are
18 required to go completely off the script?

19 A. No.

20 Q. What if they still have
21 questions after they are done asking these
22 questions?

23 A. They can ask them, even during.
24 They can ask follow-up. Even after the
25 recording is finished, they can call up

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2 the interested party later on without it
3 being recorded and ask follow-up questions
4 to say "You know what, I missed so and
5 so," or "I received new information, this
6 is what is told to me," and ask follow-up
7 questions based on that, based on
8 information received.

9 Q. How often does that happen?

10 A. I'm not quite sure. But it
11 does happen. Maybe they are negotiating
12 liability with an attorney, and the
13 attorney says "Oh, I had a witness to the
14 accident," and you may have to call up
15 your insured. And you would say "Well,
16 you said there was no witness. You don't
17 remember there being a witness at the
18 scene?" Stuff like that.

19 Q. If Ms. Harper was in a
20 negotiation, would she come to you and say
21 "Look, the attorney is at 10, I'm at 8,
22 what do you think I should do next?"

23 A. No, she would come to me to say
24 "This is what I'm recommending. We are at
25 an impasse. This is what I'm

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2 recommending."

3 Q. If she was just in an ordinary
4 negotiation, let's say her authorization
5 was 12 and the attorney asked for 15 and
6 she offered 6 and the attorney moves to
7 10, would she come back to you and say
8 "What do I do next?"

9 A. No.

10 Q. How independently of you did
11 she handle her negotiations?

12 A. Very independently. That's one
13 of her assets, she was really good at
14 that.

15 MR. HEMMENDINGER: I have no
16 other questions.

17 EXAMINATION BY MS. MCGOLDRICK:

18 Q. When you were talking about the
19 Claims Manual not having a table that
20 shows the amount of damages for any given
21 set of facts and you said there wasn't a
22 table, now, are there guidelines within
23 the manual on to how go about determining
24 damages?

25 A. Not that I can think of. The

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2 whole Claims Manual is on claims handling
3 and guidance.

4 Q. Are there details within there
5 on how to do that?

6 A. No. Not that I can recall, no.

7 Q. For example, if there is a
8 coverage problem, does the Claims Manual
9 give you detail on what you should do to
10 handle that coverage problem?

11 A. I don't recall if there is a
12 section in there. I don't recall that.

13 (Harris-Grant Exhibit 11 marked
14 for identification.)

15 Q. On the front page, Chapter IV,
16 Coverage, the first chapter says Overview.
17 It says "In every claims situation, the
18 initial task of the examiner is to verify
19 proper coverage."

20 Would you agree with that?

21 A. Yes.

22 Q. Then it says "In the vast
23 majority of claims, this is easily done by
24 reviewing computer data regarding policy,
25 insured's vehicles and the insured person

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2 involved in the loss."

3 Do you agree with that?

4 A. Not necessarily, no. It
5 depends on the coverage conditions that
6 come up. But then the investigation
7 starts.

8 Q. It says "The examiner will
9 review computer screens that provide
10 system information regarding all three of
11 these elements. Occasionally a claims
12 handler at some level of a claims
13 resolution problem will be confronted with
14 a coverage question."

15 So in this manual it is saying
16 in the vast majority of claims coverage,
17 issues are easily verified?

18 A. I don't think so.

19 Q. Is that what the manual says?

20 A. No, that is not what it says.
21 It does not say "easily."

22 Q. If we go to page 17, Coverage
23 Problem Handling Procedures. "The
24 following are step-by-step outlines on
25 handling various coverage problems." Then

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2 we have Sections A through I, and it is
3 from page 17 to 26. Do you see that?

4 A. Mine is on 16.

5 Q. You see Coverage Problem
6 Handling Procedures?

7 A. Yes, that is on page 16.

8 Q. There is a step by step guide
9 in the Claims Handling Manual for how
10 coverage claims should be handled?

11 A. This is showing screens that
12 they could look at, if it is a coverage
13 issue that can be quickly resolved. Like
14 they are showing IDIQ. Say it is a claim
15 where you want to verify permissive use,
16 you can check the policy system to see if
17 this is a listed driver on the policy or
18 not.

19 Q. It is telling you how to do
20 that, right?

21 A. Uh-huh.

22 Q. Number 4, it says "Alert your
23 supervisor/discuss coverage screens,
24 sending a reservation of rights letter."

25 A. I can tell you the reservation

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2 of rights letter is rarely sent.

3 Q. Is that what it says?

4 A. But I'm letting you know what's
5 in common practice right now. Not from
6 day one does someone see me. They may see
7 me if they choose to for guidance and so
8 forth.

9 Q. But there is a detailed step by
10 step guideline here contained in the
11 Claims Manual?

12 A. I don't think this is
13 all-encompassing. I think it is saying to
14 transfer -- hold on.

15 (Witness perusing document.)

16 Q. I'm simply asking if there is a
17 step by step guide in the Claims Handling
18 Manual.

19 A. This is what this looks like,
20 yes.

21 Q. And you were talking about the
22 negotiation action plan. You said the
23 plan itself as listed may not contain
24 specifics of what the examiner intends to
25 do.

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2 But when you discussed the file
3 with the examiner, you conference it,
4 that's when you have those discussions,
5 correct?

6 A. You ask them what are they
7 going to argue. And it is not everyone
8 that you do that with. With an examiner
9 who is as strong as Candace, I'm not doing
10 that on every file with her.

11 Q. But you do have those
12 discussions?

13 A. Mostly with people who are not
14 certified, who are not oriented.

15 Q. Then you said you handle about
16 50 percent of your time on personnel
17 stuff, like approving payroll and time
18 off, new employees?

19 A. Uh-huh.

20 Q. But I think you had testified
21 earlier if your TA2s meet their goals,
22 your performance review rating will be
23 higher, right?

24 A. If it is met, if they meet
25 their goals, I'm meeting my goals.

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2 Q. So the priority is working with
3 your TA2 examiners to make sure they meet
4 the goals?

5 A. They are my main priority, but
6 I'm not with them every day. Like I
7 testified earlier, I can have an examiner
8 that I don't meet with or conference with
9 anything for an entire week.

10 Q. But you could review their alog
11 files or their alog notes?

12 A. If it comes up for review or if
13 they come in to see me.

14 Q. Or as we mentioned in a prior
15 exhibit, when you went into alog and you
16 found that the individual didn't do as you
17 instructed, and you --

18 A. That was from my review, again.

19 Q. It was from your review, and
20 then you instructed her to do something,
21 and it was a few days later the file
22 wasn't being rereviewed, was it?

23 A. Because she was an examiner
24 that was not good at following supervisor
25 instruction, as I wrote in her PA, and

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2 that she agreed to.

3 Q. So you had to monitor her and
4 other examiners who were not good at
5 following instructions?

6 A. And if it was critical to the
7 file.

8 MS. MCGOLDRICK: That's all I
9 have.

10 EXAMINATION BY MR. HEMMENDINGER:

11 Q. Once you investigated a
12 coverage issue, could you look up in this
13 manual, Exhibit 11, to find out what the
14 answer is, to tell you if it was covered,
15 not covered?

16 A. Absolutely not.

17 (Continued on the next page.)

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MR. HEMMENDINGER: That's all I

have.

MS. MCGOLDRICK: Thank you.

[TIME NOTED: 4:15 p.m.]

MARLENE HARRIS-GRANT

Subscribed and sworn to
before me this _____
day of _____, 2010.

Notary Public

I N D E X

| WITNESS | EXAMINATION BY | PAGE |
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DIRECTIONS NOT TO ANSWER

Page Line
(NONE)

REQUESTS

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(NONE)

CERTIFICATION

I, TODD DeSIMONE, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 3rd day of May, 2010.

TODD DESIMONE

* * *

ERRATA SHEET
VERITEXT REPORTING COMPANY

CASE NAME: HARPER V. GEICO
DATE OF DEPOSITION: 5/3/10
WITNESS' NAME: MARLENE HARRIS-GRANT

[illegible]

MARLENE HARRIS-GRANT
SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY
OF _____, 2010.

NOTARY PUBLIC
MY COMMISSION EXPIRES